INSPECTORS GENERAL LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

PART 2

MARCH 25, 1982

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
95-601 O WASHINGTON: 1982

S401-59

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, JR., Delaware, *Chairman*

CHARLES H. PERCY, Illinois	THOMAS F. EAGLETON, Missouri
TED STEVENS, Alaska	HENRY M. JACKSON, Washington
CHARLES McC. MATHIAS, JR., Maryland	LAWTON CHILES, Florida
JOHN C. DANFORTH, Missouri	SAM NUNN, Georgia
WILLIAM S. COHEN, Maine	JOHN GLENN, Ohio
DAVID DURENBERGER, Minnesota	JIM SASSER, Tennessee
MACK MATTINGLY, Georgia	DAVID PRYOR, Arkansas
WARREN B. RUDMAN, New Hampshire	CARL LEVIN, Michigan

JOAN M. MCENTEE, *Staff Director*
C. LINCOLN HOEWING, *Professional Staff Member*
LINDA TOWNSEND, *Counsel*
IRA S. SHAPIRO, *Minority Staff Director and Chief Counsel*
TERRY JOLLY, *Chief Clerk*

CONTENTS

Opening statements: Page

Senator Roth 1
Senator Mattingly 6
Senator Pryor 20

WITNESSES

THURSDAY, MARCH 25, 1982

Hon. Lloyd M. Bentsen, U.S. Senator from the State of Texas 3
Frank C. Carlucci, Deputy Secretary, Department of Defense, accompanied by Joseph Sherick, Assistant to the Secretary for Review and Oversight, and Charles Starrett, Director, Defense Contract Audit Agency 8
Edward C. Schmults, Deputy Attorney General, Department of Justice 44
Margery Waxman, Deputy General Counsel, Department of the Treasury, accompanied by Paul Trause, Inspector General 49

ALPHABETICAL LIST OF WITNESSES

Bentsen, Hon. Lloyd:

Testimony 3
Prepared statement 7

Carlucci, Frank C.:

Testimony 8
Letter from Jack R. Borsting, DOD Comptroller, to Charles A. Bowsher, Comptroller General, GAO, March 12, 1982 15
Prepared statement 34
Responses to written questions submitted by Senator Roth 40

Schmults, Edward C.: Testimony 44

Sherick, Joseph:

Testimony 8
Press release, March 25, 1982 30
Press release, November 24, 1981 31

Starrett, Charles: Testimony 8
Trause, Paul: Testimony 49

Waxman, Margery:

Testimony 49
Prepared statement 51

INSPECTORS GENERAL LEGISLATION

THURSDAY, MARCH 25, 1982

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Present: Senators Roth, Mattingly, Eagleton, Glenn, Pryor, and Levin.

OPENING STATEMENT OF SENATOR ROTH

Chairman ROTH. The committee will please be in order.

As we begin the second hearing on the subject of whether to extend the Inspectors General Act of 1978 to the Departments of Defense, Justice, and Treasury. We are pleased to have as our lead-off witness today Senator Lloyd Bentsen. Our witnesses will also include Deputy Secretary of Defense Frank Carlucci, Deputy Attorney General Edward Schmults, and Deputy General Counsel Margery Waxman from Treasury.

The Inspector General concept is one that I fully support. I have consistenly favored strong, independent inspectors general for all Federal programs. I voted for a strong, independent Inspector General in DOD when the Inspector General Act of 1978 passed the Senate.

Unfortunately, that act did not cover all executive departments. Several efforts have been made since 1978 to create Inspector Generals in DOD, Justice, and Treasury. These efforts have repeatedly failed.

Although it has been a disappointment that we haven't in the past, been able to include all departments, we have been working hard in the spirit of compromise to meet some of the concerns of these agencies. We have come up with a new bill, which I introduced yesterday, cosponsored by Mr. Chiles, Mr. Cohen, Mr. Durenberger, Mr. Mattingly, Mr. Nunn, and Mr. Sasser.

I believe that this bill does insure the effectiveness of the Inspector General. The limitations on the duties and responsibilities of the Inspector Generals in these three Departments will not undermine the integrity of the concept of an independent Inspector General. I will strongly resist any changes which I believe might affect these responsibilities. This Inspector General bill, provides a sound basis for improving efforts to control fraud and waste in DOD programs. It does not include everything I would personally like to see, but it will be a vast improvement.

The statutory Inspector General in my bill will provide this committee with a basis for more effective oversight of the management of DOD programs. I can assure all committee members that future improvements in the Inspector General's office will be a top priority of this committee. We must have a strong statutory Inspector General at place in DOD as soon as possible. We can't allow cost increases of an average of 132 percent for major weapons systems to continue without providing for an effective and coordinated audit and investigation program in DOD.

We cannot tolerate bad management practices and ineffective service coordination. The creation of an Inspector General to systematically review interservice management and push for improvements is vitally necessary.

Common use of weapons by some estimates could save $1 billion or more a year, and a permanent Inspector General could identify savings through improved management and work for their implementation. In closing, I will include my full statement in the record, but I expect the full support of the administration as we move forward in our effort to create effective Inspector General offices.

[The full statement of Chairman Roth follows:]

PREPARED STATEMENT OF SENATOR WILLIAM V. ROTH, JR.

Today the committee begins the second hearing on the subject of whether to extend the Inspectors General Act of 1978 to the Departments of Defense, Justice and Treasury. Our witnesses will include Deputy Secretary of Defense Frank C. Carlucci, Deputy Attorney General Edward C. Schmults, and Deputy General Counsel Margery Waxman.

The Inspector General concept is one that I fully support. I have consistently favored strong, independent inspectors general for all Federal programs. I voted for a strong, independent inspector general in D.O.D. when the Inspector General Act of 1973 passed the Senate. I bow to no one in my support for independent inspectors general.

It has become increasingly clear to me, however, that there is significant opposition to the creation of Inspector General Offices in D.O.D., Justice and Treasury. My concern is that this opposition will delay Senate consideration of inspector general legislation for so long that we will be unable to enact a law before this Congress ends. In my view, that would be the ultimate tragedy and one which I believe we must do all we can to avoid.

Since 1978, several efforts have been made to put inspectors general in D.O.D. and the Departments of Justice and Treasury. These efforts, at least in the case of D.O.D., have repeatedly failed. Many members of this committee were here when those efforts were made and remember very well how difficult it has been to enact a statutory Inspector General for D.O.D., Justice and Treasury.

My bill does not include provisions which in the past prevented the passage of inspector general legislation for these agencies. Yet it includes protections to ensure the effectiveness of the inspector general whatever is done concerning the duties and responsibilities of the inspector general's in these three departments cannot be allowed to seriously undermine the integrity of the concept and I will strongly resist any changes which I believe might have that effect. I have offered this proposal in the spirit of cooperative compromise and I expect that spirit to be reflected by the agencies.

The inspector general bill I have drafted will provide a sound basis for improving the effort to control fraud and waste in D.O.D. programs. It is not everything I would like to see in an inspector general for the Department but it will be a vast improvement over what exists now in D.O.D. a statutory Inspector General will provide this committee with the basis for more effective oversight of the management of D.O.D. programs and I can assure all committee members that future improvements in the Inspector General's Office will be one of my top priorities. I will not hesitate to push for revisions in this proposal, once it is enacted into law, if it proves to be ineffective.

I am particularly concerned about the lack of centralized audit and investigative responsibilities in the Defense Department. Audit resources are so dispersed in D.O.D. that it is almost like straining tea through an ocean fishing net: too many pieces of tea leaf are getting through. Just to use one example, there are over 18,000 employees in D.O.D. performing audit and investigative functions and some $500 million is spent annually to support their activities. Yet these personnel are spread over at least 18 different agencies within D.O.D. and until recently there were some eleven coordinating committees to ensure cooperation among the various audit organizatins in D.O.D. Clearly, there is no "rapid deployment force" when it comes to controlling waste and fraud in D.O.D. but rather a mixed jumble of, in many cases, uncoordinated agencies and programs.

Real military spending is expected to grow 9 percent annually under the President's proposals between 1981 and 1987. Over that period, military spending will rise from 5.6 percent to 7.8 percent of gnp and from 25 percent to 37 percent of total Federal spending. Real purchases of Defense weaponry and hardware alone will grow at an annual rate of 16 percent between 1981 and 1987 and this exceeds the 14 percent annual rate of increase that occurred during the 3 peak years of the Vietnam buildup. With increases like these projected for D.O.D., we can't afford to let the fox anywhere near the chicken coop let alone have any role in guarding it.

We must have a strong, statutory Inspector General in place in D.O.D. as soon as possible. We simply can't allow cost increases of an average 132 percent for major weapons systems to continue without providing for an effective and coordinated audit and investigative program in D.O.D. We can't accept fraud in D.O.D. programs, like that which may have resulted in over 80 percent cost overruns for the overhaul of Navy ships recently, without establishing better mechanisms for controlling fraud. We cannot tolerate bad management practices and effective service coordination without creating an inspector general to systematically review interservice management and push for improvements. Common weapons, by some estimates, could save $1 billion or more a year and a permanent Inspector General could identify savings through improved management and work for their implementation.

The bill I have drafted does not authorize an Inspector General in D.O.D. identical to those already existing in other agencies. It does, however, provide authority for a statutory Inspector General in the Department which, if implemented aggressively, should prove to be an effective instrument for minimizing waste and fraud. The D.O.D. Inspector General in my bill could come straight to Congress to advise it of any especially egregious examples of fraud or waste. The Inspector General could initiate any investigation he wished. His investigations could be vetoed by the Secretary of Defense but the Secretary must come straight to Congress, and specifically to this committee, to explain any veto he has issued. In addition, the Inspector General must be nominated by the President and approved by Congress. In short, the basic outlines of an effective Inspector General in D.O.D. are provided for in my bill. It only remains to be seen how sincere the commitment is to eliminating fraud and mismanagement because no matter how you structure the office, it is the people in it who will make the difference.

I expect the full support of the administration as we move forward in our effort to create effective inspector general offices. I welcome the witnesses from the Departments of Defense, Justice and Treasury to discuss this matter with us.

Chairman ROTH. We welcome the witnesses here today and call upon my distinguished colleague to begin.

Mr. Eagleton, are there any comments you care to make?

Senator EAGLETON. In the interest of Senator Bentsen's time, I will reserve my brief statement until he concludes his testimony.

Chairman ROTH. We are always happy to welcome you, Senator Bentsen. We look forward to having you here today.

I know you are under a time constraint this morning, so we will appreciate your proceeding as rapidly as possible.

TESTIMONY OF HON. LLOYD M. BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Thank you, Mr. Chairman.

I have a lengthy statement. I would like to have consent for it to be put in the record.

Chairman ROTH. Without objection. It will be included at the conclusion of your testimony.

Senator BENTSEN. I also know you fellows have a full slate this morning. The bill I introduced in December, S. 1932, has only one objective in mind, and that is trying to save the taxpayer money, without sacrificing vital, national objectives in national defense and foreign affairs.

This piece of legislation would establish Inspectors General within the Departments of Defense, Justice, Treasury, and AID, to provide a hard core of officials to conduct audits and investigations to cut out waste. I see the Senator from Missouri is here. I occupy the office that President Truman had when he was in the Senate. He built his reputation, really, in World War II, as chairman of a Senate oversight committee charged with insuring that the taxpayers got their money's worth in national defense.

We are facing that same kind of problem today. I think all of us agree that we must have a strong national defense. That means we are going to spend an extraordinary amount of money over the next few years in trying to develop weapons systems and trying to upgrade the readiness of our defense forces.

But the one thing that we must have, and all of us agree, is an independent, tough way to ferret out waste in defense spending. I served for years on the board of directors of Lockheed Aircraft. I watched what happened during the Vietnam war.

Chairman ROTH. Was that before they almost went bankrupt or afterward? [Laughter.]

Senator BENTSEN. I would say during my tenure it almost went bankrupt, but we had a situation where we tried to go too fast in national defense and developed real choke points in production.

Finally, Lockheed set up an outside audit board. I chaired that board, as the stockholders representative, and we delved into all of the operations of Lockheed. Lockheed had some of the top secret operations during the Vietnam war, and our audits and investigations did not jeopardize those operations.

I can't see any reason why we shouldn't have that kind of auditing procedure set up for the Defense Department.

The idea that the Secretary of Defense can negate the initiation of a study, or an audit, or a ferreting out of waste, I think, is just wrong. The one thing I learned in business is to expect what you inspect.

If Federal departments and agencies know that they are subject to audit by a tough, independent auditing team that the top man can't stop, they are going to pay a lot more attention to how the taxpayers' money is spent. That is really the heart of what I am talking about.

In 1978, we passed legislation, as you know, putting Inspectors General in virtually all Federal agencies and departments except Defense, Justice, Treasury, and AID.

To my knowledge, all of the agencies that are under the 1978 act, approve of the Inspector General program, all of them.

Yet, today, we still have the Defense Department opposing it.

I think it's time we brought the Defense, Justice, and Treasury Departments under the act.

Of course we will have to put in protections of secrecy, so that the auditors are subject to the same limitations as people in the Defense and Justice Departments. However, there is no reason to believe these auditors are going to have any more looser lip than somebody already employed by these particular Departments and operating under the secrecy limitations of those departments.

Mr. Chairman, that is the heart of my legislation, and I urge you very strongly to pass legislation that will bring about those objectives.

Chairman ROTH. Thank you, Senator Bentsen.

Senator Eagleton?

Senator EAGLETON. I have a couple of questions, if you don't mind, Senator Bentsen.

I, 100 percent, thoroughly subscribe to your point of view. I think you have stated it very succinctly and very convincingly.

Let me ask two questions as followups to your excellent testimony.

There is a group over at the Pentagon called DCAA, and using Pentagonese, they have 2,727 man-years of those folks over at DCAA. To be accurate, that 2,727 is broken down as follows: 1,235 man-years' work on what they call preaward, and I will describe that; and then 1,492 man-years on postaward.

Preaward, that 1,235 group, helps draw up the contracts, in essence, advises the negotiating team, the generals, admirals and anybody who would listen to their advice as to striking a good bargain in the original contract. That is perfectly fine.

Then the 1,492 are supposed to do the kind of work that you would like to have them do in the traditional audit sense—to see that the terms of the contract are being honored and remain cost effective.

We could fill this room with GAO reports that show that in the postaward function, they aren't doing the job. We can give you cost overrun reports on the C-5A; we can go back to Harry Truman, as you pointed out, or we can bring them currently up to date.

Let me ask you this question to explore your concept of what an Inspector General in the Defense Department ought to be. If the 1,492 man-years remain in DCAA in its current moribund status, they mix with the preaward people, they don't want to snitch on the preaward people, they are sitting side by side with the preaward people. It is not realistic to think that one guy will turn to the other guy and say, "Hey, you drew up a lousy contract. We are getting screwed." If we keep them playing buddy-buddy in DCAA and the Inspector General has no supervision over the postaward people, what kind of an Inspector General are we going to have over at the Defense Department? He may have a title, a desk, a hat, even a cigar, but no personnel who really do the job that we expect and want him to do.

Senator BENTSEN. You are not going to have an effective one. He is not going to be able to carry out the mission or the assignment.

Senator EAGLETON. My second question deals with secrecy.

I can see that when you are dealing in Defense contracting matters, that inevitably, national security situations will arise.

If you are doing postaward work on Stealth, I understand that it shouldn't be all over the front pages of the newspapers. I can see,

as a pragmatist, that there will inevitably be in many instances, an element of national security and confidentiality, sensitivity, secrecy, and all of that.

However, I'm concerned that we could draft the secrecy exemption that all Mr. Carlucci—and I like Mr. Carlucci—has to do is whenever the Inspector General latches on to an embarrassing situation about a certain contract is put the old secrecy label on it.

They used to do it over in the Defense Department on newspaper articles. They would put "secret," "confidential," "eyes only" on newspapers.

So if we draft this provision so broadly that Mr. Carlucci can just say, "That is secret, you can't look at that," we may be thwarting the effective work of an inspector general.

My question is this: Don't we have to very carefully craft the secrecy section of the bill to avoid making it so sweeping as to give an escape valve to the bureaucrats in the Defense Department and yet be sensitive to legitimate national security concerns?

Senator BENTSEN. Senator Eagleton, of course you are right, and that is the more difficult one; trying to draw that line. We run into that, as you know, on the Intelligence Committee. It is a continuing problem by those officials who might try to abuse it to try to cover up.

Hopefully, those are the minority, and I think they are.

But you have two objectives there, and they are in conflict. Trying to serve both of them is not an easy task.

Senator EAGLETON. Thank you, very much.

Chairman ROTH. Senator Mattingly?

Senator MATTINGLY. I have no questions at this time. I do have a prepared statement for the record.

Chairman ROTH. Your statement and that of Senator Bentsen will be inserted into the record at this point.

I thank you very much Senator Bentsen.

[The prepared statements of Senator Mattingly and Senator Bentsen follow:]

PREPARED STATEMENT OF SENATOR MATTINGLY

Mr. Chairman, I want to commend you and your staff for the good work that has gone into the preparation of this Inspector General Legislation. I understand that this has been an issue of interest for quite some time here on Capitol Hill. With the onset of fiscal responsibilty that has suddenly become popular here—I never heard so many politicans worry about deficits before—Congress is looking at many ways of controlling its spending. The basic part of "control" is to know what and where the government's money is going.

Companies have known for quite some time that the best way to guard the businesses money is to have an outside audit performed. It's all well and good to have your own staff try to put things in order: but to get a truly objective view, you must have an independent opinion. This "Inspector General" office is one attempt to get an outside opinion on the internal management of a federal agency. It is an effort I approve.

Many of the critics of the President's Defense policy say that we are pumping too much money into the Department of Defense. They contend that there is a large amount of waste already apparent in this Department, and that attempts to "clean up" the agency have, and will continue, to fail.

Well, I know right now that the Defense Department needs to drastically change the course its been heading in the build-up of arms. Just this Sundays' edition of the New York Times had a graph showing the huge disparity between American and Russian armaments. You know, respect is built upon mutual strength as well as understanding. Now, that is not to say that the Defense Department, just like a lot of

other places around here in Washington, couldn't be made more efficient, and doesn't need proper safeguards to protect it from internal mismanagement. The G.A.O. has been a watchdog of the public interest in this, and other agencies, and has often come up with good suggestions for fiscal improvement. I think we all want to make sure that every Federal dollar spent is spent wisely.

For these reasons, I support the intent of the Inspectors General Legislation. I hope these hearings will clarify the method that each of these agencies will deal with the proposal, if approved by Congress. I am also concerned that these Inspectors General will be representatives of the public, with the Public interest at heart, and not concerned about "stepping on toes" in their designated arena. We cannot have meager Inspectors General.

Thank you.

PREPARED STATEMENT OF SENATOR BENTSEN

Thank you, Mr. Chairman, for the opportunity to appear before the committee on Government Affairs and testify on behalf of S. 1932, legislation I introduced in December to establish Offices of Inspector General within the Departments of Defense, Justice, Treasury, and AID.

Mr. Chairman, even at a time of emerging differences on how this country should invest its resources and manage its economy there are certain broad areas of consensus where we can still rally agreement. Despite the recession there is strong evidence to suggest that the American people are prepared to sacrifice on behalf of a strong national defense.

When we consider the enormous resources consumed by Defense, with the President requesting more than a quarter of a trillion dollars for fiscal year 1983, it is equally obvious, however, that we cannot tolerate waste, fraud, or mismanagement in an area vital to our national security and the economic strength of our democracy.

This consensus is not confined to Defense.

I sense a willingness all across the political spectrum to see America continue as a force for reason and moderation in the world, willing to help our friends to the best of our ability. And I am certain you will agree that Republicans and Democrats, liberals and conservatives can all stand united in their opposition to $100 billion deficits and agree on the necessity of moving promptly toward a balanced budget.

Finally, Mr. Chairman, we can all agree there are no easy answers or painless remedies for the very difficult defense and economic challenges facing America in the decade of the eighties.

I believe—and I hope members of this committee will agree—that the demand for economy and efficiency in government is an indispensible element in the search for answers to the problems of America.

S. 1932 is designed with only one purpose in mind: To save the American taxpayers money without sacrificing vital national objectives in key areas such as defense and foreign affairs. This legislation would establish Inspectors General at the Departments of Defense, Justice, Treasury, and AID; it would provide a hard core of officials whose only job would be to ferret our waste and insure that those Departments spend their tax dollars wisely and for the purposes they were intended.

Reduction of waste, fraud, and abuse in Federal spending has been a high priority for every Congress and every administration in recent history. Numerous studies and hearings have been conducted to determine the best means to accomplish that objective. Back in 1978 Congress passed the Inspector General Act to establish an Office of Inspector General in many departments and agencies.

These offices were given independent authority to conduct audits and investigations relating to programs and operations.

Under the act, the inspectors general are also empowered to provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of Federal programs. They were also given a mandate to prevent and detect fraud and abuse.

Mr. Chairman, I would particularly like to stress the importance of empowering these proposed inspectors general with independent authority to conduct audits and investigations of the agencies for which they are responsible. I firmly believe this is essential to the integrity and accuracy of their work.

You cannot have an independent inspector general with the power to conduct audits and investigations if he/she cannot do anything without the permission of or contrary to the wishes of the head of the department of agency under scrutiny.

As you are aware, Mr. Chairman, every inspector general established under the 1978 act and subsequently, has been given this independent authority and I see no reason to make exception for the Inspector General proposed for Defense, Justice, Treasury, and AID.

I recall very clearly not so long ago when we were debating the defense appropriations bill and many Members of the Senate were looking for ways to get at what the Director of OMB referred to as the "swamp of waste and inefficiency" in defense spending. There was agreement in the Senate at the time that most of the amendments offered on that bill were simply too arbitrary or not sufficiently specific to warrant cutting programs essential to our national defense.

Everyone, in other words, knew that there was waste in that huge appropriation, but we didn't know where to find it. With an independent inspector general at DOD, we'll all be in a better position to monitor how the hundreds of billions of dollars we appropriate every year for defense are being spent.

Mr. Chairman, I am pleased to see that in testimony before the House Committee on Government Operations, the Reagan administration specifically supported legislatively mandated inspectors general.

As I am sure you are aware, legislation identical to S. 1932 was passed overwhelmingly 344-65 by the House of Representatives in May of last year. Prompt and favorable action by this committee and by the Senate will give us an important new tool for encouraging efficiency and discouraging waste in the handling of trillions of dollars over the next several years.

If we are going to continue to ask the American public to sacrifice at a time of recession for worthwhile causes like national defense and fiscal integrity, we have an obligation to do everything in our power to insure that every nickle of those hard-earned tax dollars is wisely spent.

My office in the Russell Building was once occupied by a Senator from Missouri named Harry Truman. During World War II, when this Nation was united behind our war effort and we asked all Americans to sacrifice and help build our defense effort, Harry Truman chaired an oversight committee to make sure that every dollar the American people contributed to the war effort was spent for that purpose. Mr. Truman's diligent efforts earned him recognition as a staunch foe of waste and helped build a reputation that we can all strive for.

Particularly, Mr. Chairman, at a time we are trying to make maximum effective use of finite resources under recession conditions, I believe every Member of the Senate has an obligation to continue President Truman's campaign against waste, fraud, and abuse in Government spending. S. 1932 is a good place to start. I sincerely believe we need Inspectors General at the Departments of Defense, Treasury, Justice, and AID, and I hope the members of this distinguished committee will agree and help us move this legislation forward.

Chairman ROTH. It is now my pleasure to call Frank Carlucci, Deputy Secretary of Defense.

We are happy to welcome you and Mr. Sherick before this committee on a very critical piece of legislation. It is our rule and practice, that your statement will be included in its entirety in the event you care to summarize it. Please proceed.

TESTIMONY OF FRANK C. CARLUCCI, DEPUTY SECRETARY, DEPARTMENT OF DEFENSE, ACCOMPANIED BY JOSEPH SHERICK, ASSISTANT TO THE SECRETARY FOR REVIEW AND OVERSIGHT, AND CHARLES STARRETT, DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY

Mr. CARLUCCI. Thank you, Mr. Chairman.

I am accompanied by Mr. Joseph Sherick, who is assistant to the Secretary for Review and Oversight, a position that we have created that is analagous to the Inspector General position.

I do appreciate the opportunity to appear today to discuss the creation of a statutory Inspector General in the Department of Defense.

I will, with your permission, sir, submit my full statement for the record and make a few brief comments.

The Department fully supports the establishment of a statutory Inspector General. Secretary Weinberger and I have been enthusiastic supporters of the inspection process since the days when we were in HEW. I can remember that we tried way back then to create a strong Inspector General in HEW.

At that time, we ran into some resistance on the Hill. I am pleased to see that the concept is fully supported on the Hill.

We do believe, however, that any Inspector General legislation must take into consideration the special nature of the Defense Department's management, organizational structure, and mission.

We support the bill proposed by the chairman of the committee, and although we believe that further clarification of the legislation as it relates to the Department of Defense components is desirable.

We are pleased that Chairman Roth's bill recognizes two of our previously stated important concerns: That the Inspector General must be subject to the authority, direction and control of the Secretary of Defense, and that with appropriate notification to Congress, the Secretary can limit audits or investigations of the Inspector General that impact on the national security.

H.R. 2098, as passed by the House, fails to recognize these concerns. We, therefore, cannot support it or any similar legislation such as S. 1932.

While we support the chairman's bill, we feel it would be desirable to recognize the unique nature of the Department, something which the 1978 act explicitly did, and provide for a Defense Inspector General with duties and responsibilities in a separate section from those establishing civil agencies Inspectors General.

Substantively, this section would be very similar to the treatment in Chairman Roth's bill, but would make the Defense Inspector General responsible for monitoring and evaluating any audits and investigations in the Department.

Also, to preserve the existing lines of authority of the audit inspection and investigative units of the military departments, the Defense Inspector General should be able to initiate, conduct and supervise through his Defense Audit Service and Defense Criminal Investigative Service, such audits and investigations that he deems appropriate.

Mr. Chairman, there are other matters involving language in the bill that we would be happy to discuss with the committee.

The kind of Inspector General I have discussed would be very helpful in reducing fraud and waste and abuse in the Department and would contribute to ongoing management improvement efforts already made or presently underway in the Department.

That concludes my remarks, Mr. Chairman.

I am ready to accept whatever questions you or the committee may have.

Chairman ROTH. Mr. Carlucci, as you know, there is a broad consensus up here that we need a strong statutory Inspector General. There has been considerable reservation in the Department of Defense, not only during this administration, but the prior administration on grounds that secrecy and the nature of the DOD mission called for some special considerations. I have drafted this legislation, S. 2274, offered yesterday, in an effort to meet some of these concerns.

It has bipartisan support; as I mentioned, Mr. Chiles, Mr. Cohen, Mr. Durenberger, Mr. Nunn, Mr. Sasser, Mr. Mattingly and myself. We are all of a mind that it is important that the Inspector General be in a strong position to root out any waste and fraud.

We have taken care of that, and are trying to maintain that independence by providing in the legislation that if the Secretary for some reason issues instructions that a particular audit should not be made, this would be reported to the Congress, both to the authorizing committees and Governmental Affairs and Government Operations in both Houses within 30 days. In the event it was of particular sensitive military secrecy, the Secretary would report to the majority and minority leadership in both Houses.

We believe that this will provide the kind of independence and strength that the Inspector General must have if he is going to be effective.

There is concern as to how the Secretary's veto authority will be exercised. Instead of the Inspector General seeking formal, actual approval from the Secretary for every audit, investigation, or subpena, which might involve a cumbersome process, the statute simply imposes upon the Inspector General a requirement that he notify the Secretary of the proposed activity and thereby provide the Secretary with an opportunity to exercise his veto authority.

In other words, it would be undesirable for the Inspector General to have to operate under a formal approval mechanism.

Would you comment on this and the issue of how the Department views the exercise of the veto power?

Mr. CARLUCCI. I appreciate the opportunity, Mr. Chairman, and let me say, once again, we share your view that there ought to be a strong statutory Inspector General. We did, as you know, establish an analogous position at the outset of our administration. We also support the reporting to the Congress on the use of the veto authority. We think it would be used very sparingly and only in cases of absolute need or crisis situations. One can envision military operations of a highly sensitive nature, rescue operations and that sort of situation where it might be needed.

I have no problem with the formulation that the Inspector General simply notify the Secretary of any proposed inspections and audits, giving him an opportunity to exercise a veto. In fact, that is the way we are currently functioning now with Mr. Sherick.

Mr. Sherick only calls to my attention or the Secretary's attention, items that he thinks are particularly sensitive that he is going to investigate. This certainly has not hindered his operation in any sense.

Chairman ROTH. In other words, you would view the exercise of the veto as an extraordinary measure?

Mr. CARLUCCI. Yes. Certainly, the Inspector General would have, as Mr. Sherick has, all the clearances and access that the Secretary of Defense and I have. It is really not a question of keeping sensitive, national security information from him. It is a question of whether a particular investigation or audit might start at such a time as to disrupt or reveal a process in motion that could result in serious compromise or, indeed, conceivably, a loss of life.

It is those kinds of situations which make a military organization very different from a company like Lockheed.

Chairman ROTH. Could you give me an idea of how many times either you or the Secretary have reversed or instructed Mr. Sherick not to proceed with an audit?

Mr. CARLUCCI. Zero.

Chairman ROTH. I see you nodded your head Mr. Sherick.

Mr. SHERICK. Yes. That is right. There are no instances of that kind.

Chairman ROTH. In September 1981, the DAS issued a report on the DOD hotline. That report observed that military commanders have the prerogative to refuse to be investigated by an organization from outside their service, even when there is an allegation of fraud, theft, or illegal operations.

The report went on to observe that this authority adversely impeded the independent investigation of such allegations. The military commanders currently have the authority to choose who will investigate fraud and waste within their commands.

Can a military commander tell Mr. Sherick that they will not be allowed to conduct an investigation, and that the investigation will instead, be conducted by an organization chosen by the commander?

If such authority exists, what, if anything, are you doing to change it so that except as under those circumstances where national security concerns are present, the DOD Inspector General can fully investigate suspected instances of fraud?

Mr. CARLUCCI. That was changed with the creation of Mr. Shericks' office. He has authority to investigate any activity in the Department. Indeed, that is one of the things that we think should be spelled out more explicitly in the statute—giving him authority to initiate audits and investigations through his Defense Audit Service and Defense Criminal Investigative Service and still maintain review and oversight responsibility for the multiple inspection and audit units in the military departments.

Chairman ROTH. Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman.

At the outset, Mr. Carlucci, let me commend the Reagan administration for grappling with this issue and coming forward with support for the creation of the statutory Inspector General. That speaks well of the administration in distinct contrast to the Carter administration, where at every juncture, when this matter was being discussed, we were thwarted or frustrated usually by Mrs. Siemer, a very talented lady.

At the outset, then I commend you for a fresh approach. You heard my questioning of Senator Bentsen. Let me pursue some of those matters with you. Let me explore one tangential item brought out by Senator Roth's question. You said you would use the veto sparingly. Indeed, you have not vetoed anything in the year-plus that you have been in office. Of course, you cannot speak for all future Secretaries of Defense or all future Inspectors General.

Mr. CARLUCCI. No, sir.

Senator EAGLETON. We might have a veto-happy Secretary of Defense sometime in the future.

Mr. CARLUCCI. That is conceivable, but I also indicated to you that we supported the reporting requirement to the Congress.

Senator EAGLETON. All right.

In your prepared testimony I call your attention to page 3, the top paragraph thereof. I will read it for the record:

> The resources of the Assistant to the Secretary for Review and Oversight are only a portion of the audit, inspection and investigative resources in the Department of Defense. The balance of the Department's audit, inspection and investigative force of some 16,000 personnel is primarily in the military departments and serves the needs of the Service Secretaries and Military Commanders in performing their missions. It is essential not to disrupt those existing reporting relationships and the important services that are being provided.

That brings me to my first line of questioning. With respect to DCAA, can we establish for the record that those figures I heard are roughly accurate? The preaward work in DCAA amounts to about 1,235 man-years and post-award to about 1,492 man-years; is that in the ball park?

Mr. CARLUCCI. Yes, and let me ask Mr. Sherick to join me here at the table. Mr. Starrett is the Director of the Defense Contract Audit Agency.

Senator EAGLETON. Fine. Are those figures approximately in the ball park, sir?

Mr. STARRETT. Yes, sir.

Senator EAGLETON. All right. It is my personal judgment—and I have been working on this Defense Inspector General, now, for many years—that if we create a statutory Inspector General but leave DCAA as it is currently constituted, we will have, in effect, have created a cosmetic Inspector General. We will have it on the statute books, we will point to it with pride, we will talk about it when we go back home and campaign about how we are cracking down on cost overruns, waste, fraud, and abuse in the Defense Department, but we will know that we have done very little, other than conducted a cosmetic exercise.

The present situation within DCAA is inherently incestuous. You have commingled career contract types who help draw up the contract and they will have has at least a minimal pride of authorship—with others who are supposed to see, (a) whether the terms of the contract were all that good; and, (b) whether they are being honored in the execution.

That just won't fly. That doesn't fly in the world of commonsense.

Why is it that you resist the notion of transferring the 1,492 postaward people at DCAA, and I am not talking about the 16,000.

Why shouldn't those postaward auditors, investigators, accountants, whatever their expertise may be, be under the direct command, control and authority of the statutory Inspector General?

Mr. CARLUCCI. Senator Eagleton, let me make a couple of points. First of all, I would disagree very strongly that without DCAA, the proposed Inspector General Office would only be a cosmetic function. Mr. Sherick currently has some 550 people. He has authority to go into any part of the agency. He has authority and responsibility for review and oversight of the audit investigation and inspection audit, functions of the services. So he has quite a hand on those 16,000 people I referred to in my testimony.

It is, perhaps, unfortunate that the word "audit" is in DCAA's name. Maybe we ought to change the name.

Senator EAGLETON. It has been there for many years.

Mr. Carlucci . I think it gives rise to some confusion. The agency is basically advisory in nature. There is also a perception that work such as reviews of incurred costs, is not of an advisory nature. This is not true. The mission of the agency is one of advisory financial services to Federal procurement organizations. The contract audit effort of the DCAA is inextricably entwined with incurred costs, proposal and other audit activities relating to procurement.

In other words, it is an agency which has program operating responsibilities. It was my interpretation of the Inspector General Act of 1978 that organizations with operating responsibilities were not to be made part of the Inspector General function. Indeed, that would create problems, because who, in that case, would be able to audit or investigate DCAA?

Let me ask Mr. Starrett to elaborate on DCAA's functions.

Mr. STARRETT. Thank you very much.

The two functions, proposal reviews and incurred cost audits you described in the numbers, which, as I said, were correct, make up the vast majority of our work. However, the manner in which we conduct our work, I think, is very important in talking about this issue. The evaluation of the proposal, of the forward pricing proposals, are performed by auditors that are in major contracting locations. The evaluation of the proposal is primarily based on the projection of the costs that have been incurred under prior contracts.

You need to have information related to how well and how efficiently the contractor has been operating in order to be able to evaluate the proposal. Both of these functions are performed by the same people. We get audit leads from evaluating proposals that we use in auditing incurred costs. In the audit of incurred costs, we get leads we use in the evaluation of proposals. Therefore, if we were to split, if you would, the agency into two pieces, you would have to provide for some kind of communication between these two separate organizations. That would be, in my judgment, extremely ineffective, it would not operate very well. Two separate organizations would be reviewing the same contractor's books and records.

The other points that Secretary Carlucci has mentioned include the one about being operational. We provide advice to the acquisition community. That advice is provided for the two functions we are talking about. One is the forward pricing area, and one is the final pricing, really, of the contract. At the conclusion of a flexibly priced contract, there is an amount that has to be paid the contractor, based on our audits of incurred costs. In arriving at that amount, you go through almost the same process at the end as you do in the beginning in negotiating a price. It is at both of these points we provide the advice to the acquisition community that they use.

Senator EAGLETON. I will ask a followup question on my next round.

Chairman ROTH. Senator Mattingly?

Senator MATTINGLY. Thank you, Mr. Chairman.

First, I would like to commend the chairman and the staff and everybody else that has put together this legislation over a long period of time. I am happy to be a cosponsor.

One question I would like to ask, Mr. Carlucci, is, are you concerned that any future Secretary of Defense might claim an area might be too sensitive to prevent an audit by the Inspector General?

Mr. CARLUCCI. I think the bill makes out a provision for that, Senator Mattingly, by requiring the Secretary, in those circumstances, to report to the Congress.

I can conceive of situations that might be too sensitive for an inspection at a given time. But I think it would be hard, the way the chairman has framed the bill, for there to be a pattern of activities where a Secretary consistently vetoes inspections or audits without the Congress intervening.

Senator MATTINGLY. I support the intent of the legislation, and I hope that as we go along, the hearings are going to clarify what methods will be utilized and how these agencies are going to deal with this new proposal.

But I am also concerned that the Inspector Generals must be the representatives of the public and have the public's interest at heart.

They must not be concerned about stepping on the toes of people in their designated areas. That is, we must know that this is an independent Inspector General.

I have some problem myself, as Senator Eagleton has said, that it may be that something like DCAA ought to be included in this area.

I would like to hear your expansion on that.

Mr. CARLUCCI. I can only reiterate what we have said, Senator Mattingly: That the nature of DCAA's work is not consistent with the function of an Inspector General. They are an operating and a service organization that assists the contracting officer in evaluating pricing and proposals. To put them under the Inspector General would simply diffuse the Inspector General's management efforts, thereby deflecting from his ability to concentrate on the real areas of fraud, waste and abuse. You would put the Inspector General into the costing and contracting area, which is not where he belongs.

Senator MATTINGLY. I haven't been here all that long in the U.S. Senate, but I know in Government, any exclusion worries me a little bit. I just left another hearing in the agriculture area. We were talking about trying to get some Inspector General's out to help with investigations and possible goings on.

I just think that if we are going to have Inspector General's, I hate to see any exclusions, because then it diminishes the role of the program.

I think that as time goes along for this legislation, we are going to have to see that it is very clearly understood, or if it is not understood, that you will have to put it in somewhere.

Mr. CARLUCCI. On the question of manpower, I will see to it that Mr. Sherick and a Defense Inspector General has the requisite manpower, but I think we have to have the right functions here.

The Defense Contract Audit Agency is much closer to the contracting officer than it is to the Inspector General.

Senator EAGLETON. Would the Senator yield 2 minutes on my time?

Senator MATTINGLY. Yes; just a second.

But I think that you and Weinberger did a fantastic job, just up front.

But I have got 5.5 million independent Inspector General's in my State looking after me. I just want to make sure that we haven't got any exclusions in the Federal Government. That is where I am coming from.

With that, I will not only yield to you my 2½ minutes, but I am leaving to go somewhere else.

Senator EAGLETON. I think the Senator from Georgia is absolutely correct.

Let me read just two sentences from the General Accounting Office report of February 5, 1982, on this very subject matter that Senator Mattingly and I have raised.

> Our earlier review of DCAA's operations showed that a large portion of the agency's resources were spent on preaward surveys which provide contracting officers with financial information and advice on proposed contracts.
>
> We view these activities as more of a procurement support function than an audit or review function.
>
> Other DCAA activities, however, may be consistent with the types of work that should be performed by an independent audit organization under an auditor general.

Mr. Bowsher, like Mr. Statts, insists on calling this fellow the auditor general. But I think his comment carries significant weight and it applies very directly to the line of questioning pursued by both myself and Senator Mattingly.

Mr. CARLUCCI. Mr. Chairman, since that has been entered into the record, may I enter into the record our reply to Mr. Bowsher on that point which reiterates——

Senator EAGLETON. Telling him he is all wet, I guess.

Mr. CARLUCCI. Well, it is telling him that there is a misunderstanding of the mission of the DCAA.

[The letter from the DOD Comptroller to Mr. Bowsher follows:]

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., March 12, 1982.

Mr. CHARLES A. BOWSHER
Comptroller General, U.S. General Accounting Office,
Washington, D.C.

DEAR CHUCK: On 5 February 1982, you issued a staff study (AFMD 82-26) entitled, "Who Is Watching the Defense Dollars?" The final paragraph of this staff study suggested that certain Defense Contract Audit Agency (DCAA) activities may be more consistent with the type of work that should be performed by an auditor General (IG) as opposed to those activities which support the procurement function. In addition you noted that you had advised the Senate Committee on Governmental Affairs that in reviewing the merits of shifting a portion of DCAA's resources into a DoD Inspector General office, careful consideration should be given to the present balance of effort between these types of activities. In view of these comments and the possibility of the Senate Governmental Affairs Committee having hearings on this subject, I'd like to provide an overview of DCAA functions.

One of the most common misunderstandings of the mission of DCAA is the concept that certain work performed by the Agency is advisory in nature (e.g., proposal audits) and other work such as incurred cost audits is not of an advisory nature. This is not true. The entire mission of the Agency is one of advisory financial services to Federal procurement organizations.

The entire contract audit effort of the DCAA is inextricably entwined with incurred cost, proposal, and other audit activities. The review of a price proposal benefits from the incurred cost audits performed and vice versa. Many audit leads for incurred cost audits are obtained in proposal evaluations and many reviews for

economy and efficiency of contractor operations result in valuable assistance in proposal evaluation effort.

For example, as you know one GAO auditing standard concerns economy and efficiency of operations. The savings which have resulted from DCAA operations audits have been reflected in subsequent contractor price proposals in the form of reduced costs and also in the reduction of ongoing costs incurred by the contractor. Maintaining visibility of these actions by two separate organizations would be extremely cumbersome and would no doubt result in much less efficiency in attempting to coordinate these actions.

Another dilemma resulting from a splitting of the function concerns Public Law 91-379, Cost Accounting Standards. Reviews for compliance with cost accounting standards occur as part of the examination of contractor accounting practices used in estimating costs as well as in the recording of contract costs. The law requires that the contractor comply with cost acounting standards in both proposing and recording costs and that the recording of costs must be consistent with the manner in which they are proposed. If the contract audit function as it relates to estimated costs and recorded costs were split between two organizations, contractors would be subject to two different Government organizations reviewing essentially the same books and records. The Federal Government has been attempting to minimize the burden on the public in general and contractors in particular by not making organizations subject to overlapping and duplicative Government surveillance.

The organizational placement of the proposal evaluation function if it were separated from normal DCAA auditing effort creates an additional problem. Assuming this function would be transferred to the acquisition community, a serious loss of independence would result since the personnel auditing the proposal would be under the same organizational control and authority of those negotiating and awarding contracts. DCAA's present independence and advisory role to the Government pricing team assure objectivity and impartiality. this could not be achieved by placing the function in an acquisition organization. This aspect is especially critical in the present environment of increased defense procurement expenditures and the need to assure, as you recognize in your staff study title, that each defense dollar is spent prudently.

If you or your staff would like to discuss any aspect of DCAA with me or the Director of DCAA, we would be very pleased to meet with you.

Sincerely,

JACK R. BORSTING,
Assistant Secretary of Defense.

Mr. CARLUCCI. May I also comment that I am informed that the same GAO document concludes that the Defense Contract Audit Agency should not be included in the Defense Inspector General.

Senator EAGLETON. Since February 5, 1982?

Mr. CARLUCCI. It is the same study, yes, sir.

Senator EAGLETON. You mean they say "yes" here and "no" on another page?

Mr. CARLUCCI. The statement I referred to is on page 33 of the document.

Senator EAGLETON. That sounds like stockbroker's advice.

Chairman ROTH. If I am not mistaken, am I not correct that GAO generally came out in the negative, but then added the statement that——

Senator EAGLETON. I just read from the report.

Chairman ROTH. What I am saying, Tom, is it my understanding that they elaborate and said that if you broke down the components of that agency, that you could conceivably split off that one aspect?

Senator EAGLETON. That is all I am talking about.

Chairman ROTH. I think maybe you are both right.

Chairman ROTH. Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

I, too, would like to add my commendation to you, Mr. Chairman, for holding this hearing.

I think it is of the utmost importance. I am proud that we are taking this step in exploring the need for an independent Inspector General, or statutory Inspector General, within the Department of Defense.

I would also like to express my appreciation to Senator Eagleton, who has been a moving force in the entire concept of Inspectors General in the past.

I am very proud to be a part of this hearing this morning in exploring what we should do next.

Mr. Carlucci, let me tell you what worries me. I am afraid that you are here testifying this morning that the Department of Defense is continuing its opposition to an independent Inspector General in the Department of Defense.

I will cite on page 2, the first sentence on page 2 of your statement, and I quote your statement, "the Inspector General must be subject to the authority, direction and control of the Secretary of Defense"; I don't think that speaks of independence.

Then further down in the middle of the page, on page 2 of your statement, you say, "This individual must have a close and continuing relationship with the Secretary of Defense and have his support in order to be effective."

I don't think that this speaks to the independent nature of the Inspector General as we have in other agencies and branches of government.

I go back to the June 18, 1981, hearing when William Howard Taft IV, the General Counsel for the Department of Defense, appeared before this committee, and I read his testimony:

> Those provisions which would establish the independence of the Inspector General in the Department of Defense are completely inconsistent with the hierarchical commander subordinate relationship that is at the heart of any military organization and is embodied in the chain of command. These provisions do not encourage the individual to work with the Secretary as part of the team.

I think we are basically being urged to adopt—and I think Senator Eagleton used this adjective—a "cosmetic" approach. It gives me some worry, some fear, that we will go back home and say to our citizens in our States, that we have adopted an independent Inspector General when, in fact, we have not.

I wonder if you would comment.

Mr. CARLUCCI. It is certainly true that we believe the Inspector General ought to be under the authority, direction and control of the Secretary of Defense. We make this case because Defense, a military establishment, is clearly different than other departments of government. From the beginning of time, the basic rule of a military establishment has been response to command authority. We have a command responsibility that extends from the President down through the Secretary of Defense to the military organizations that may have to be used in a time of crisis.

It is just not tolerable in those circumstances to have someone who is not under the authority, direction and control of the Secretary of Defense. The Secretary of Defense is accountable to the Congress. We think that Senator Roth's bill has struck a very good balance between the need to parallel the National Security Act, which uses the terms "authority," "direction," and "control," and the need for independence by the Inspector General.

The Inspector General can provide reports to the Congress as specified in the bill. If the Secretary of Defense decides to intervene in extraordinary circumstances and has to exercise a veto on an audit in investigation, and he then has to report that to the Congress.

So we think that this gives the Inspector General a very substantial degree of independence, yet it is compatible with the hierarchical needs of a military organization that could be called upon to send men into danger.

Senator PRYOR. Mr. Carlucci, let me ask this question another way: Where are the checks and balances in the process when the Secretary of the Department of Defense could stamp "National Security" on a matter and say that the Inspector General shall go no further; where are the checks and balances within that process?

Mr. CARLUCCI. The checks and balances in Senator Roth's bill are embodied in the reporting requirement that the Secretary reports to the Congress within 30 days if he stops an audit investigation. Obviously, if some Secretary of Defense is going to abuse that and you got a report up here every day, the authorizing committees and this commitee would step in and take appropriate action.

The Secretary of Defense is not asking for carte blanche to impede the activities of the Inspector General. What he is asking for is a tool to use, in extraordinary circumstances, where human lives could conceivably be at stake.

Senator PRYOR. Let me talk for just a moment about the true commitment of DOD to the Inspector General concept itself.

What percentage increase in the audit function have you asked for in the 1983 budget? You have asked for somewhere between an 18- to 20-percent increase in total appropriation requests.

How much budget authority are you asking for in addition to what you asked for last year?

Mr. CARLUCCI. I don't have that here. I would like to submit that figure for the record.

[The information referred to follows:]

AUDIT BUDGET INCREASES

[Dollar amounts in millions]

	Fiscal year 1982	Fiscal year 1983 request	Increase	Percent increase
Defense Audit Service	$20.2	$23.3	$3.1	15
Army Audit Agency	30.6	30.3	(.3)	(1)
Naval Audit Service	20.1	22.0	1.9	9
Air Force Audit Agency	30.9	32.8	1.9	6
Total	101.8	108.4	6.6	6

Senator PRYOR. Have you asked for additional auditors?

Mr. CARLUCCI. Yes, we have asked for additional auditors.

I might say also that we have created the Defense Criminal Investigative Service, which did not exist when we came into office. When we established Mr. Sherick's position, I authorized 100 slots to him for the purpose of criminal investigation, but we have asked

also for an increase in internal audit staff. I would be glad to provide that to you.

Senator PRYOR. I would like to have that.

[The information referred to follows:]

AUDIT STAFFING INCREASES

	Fiscal year—		Increase	Percent increase
	1982	1983 request		
Defense Audit Service	501	557	56	11
Army Audit Agency	874	874		
Naval Audit Service	575	630	55	10
Air Force Audit Agency	1,024	1,024		
Total	2,974	3,085	111	4

Senator PRYOR. Under your proposal, and I guess under Senator Roth's proposal, the Office of Inspector General basically would be manned or staffed by only one-half of the personnel that now staff the Office of Inspector General in the Department of Agriculture. They have about 930 people in that office.

HHS has about 979. These are 1980 figures. In fact, in 1982, HHS went up to 1,800; HUD today has 553 in that office; GSA has 536 in that office.

Are we not really making a pretty feeble commitment under this proposal to the real independence and the toughness of the Inspectors General in the Department of Defense—a Department which spends far more money than any other Department in Government?

Mr. CARLUCCI. Senator Pryor, as an aside, may I say I am happy to hear the Inspectors General in HHS is up to about 1,000. When Secretary Weinberger and I were there, we had a congressional limitation of 15.

You are mixing apples and oranges, sir. The analogous figure in the Department of Defense would be close to something like 16,000 investigators, inspectors, and auditors. We are a somewhat decentralized organization; a much more complex organization than HHS or the Department of Agriculture.

The route we have chosen is to give Mr. Sherick a substantial staff of his own—550 people—so he has his own staff to move about as he sees fit. He has his own audit and criminal investigative staffs, but more significantly, he has review and oversight responsibilities for the multiple inspection, investigation and audit staffs through out the Department.

There have been several occasions in the past year, in fact, where I have directed the Services to investigate some things. I have told them at the outset that after they completed their investigation, I was going to have Mr. Sherick review it. He has independent authority to do that. If he chooses to review an inspection or an audit being conducted by the Department of the Army, he can do so. He can evaluate them and recommend a change in direction. He can critique an audit.

So he, in effect, has his hands on a staff of some 16,000.

Senator PRYOR. I don't know, how under this proposal we are really changing the approach to so-called waste, fraud and abuse, to efficiency, or to cost overruns, over the system that we now use.

Mr. Sherick is on board. He has a lot of people. He has a lot of power. But, almost daily, as we saw in the Washington Post this morning, there is an additional article refering to the need for Pentagon review. Today's article concerns the Black Hawk program, which has increased 237 percent in cost overruns. What additional authority are we really getting out of this proposal if we are not getting a truly independent Inspector General?

Mr. CARLUCCI. Senator Pryor, let me say that we took our responsibility seriously when we came into the Department of Defense. Therefore, we moved early on to establish a position analogous to that of Inspector General.

Hence, we are supportive of the concept, and we do believe that Senator Roth's bill would be helpful in perpetuating that concept.

We do think we are moving vigorously in the area of waste and fraud and abuse. We have laid before the Congress a program to deal with the problems of cost escalation and other problems in acquisition. That is a whole separate subject, but I would be prepared to attend any hearing on that subject. We think the bill will be helpful in helping us carry out our responsibilities.

Senator PRYOR. Don't you approach it as a concept rather than a statute?

Mr. CARLUCCI. Concept?

Senator PRYOR. You keep talking about the concept.

Mr. CARLUCCI. I don't know the difference between——

Senator PRYOR. We are not talking about a concept. We are talking about a piece of legislation.

Mr. CARLUCCI. The statute embodies a concept in law, and we agree with that. We went ahead and administratively established the position as it is now functioning.

The statute would place that position in law. Hence, we support it. It would also add some other things such as the requirement for a report to the Congress if the Secretary of Defense should veto an investigation or an audit. We support that provision, as well.

Senator PRYOR. My time is up, Mr. Chairman.

Mr. Chairman, I do have a statement for the record I would like to put in at this point.

Chairman ROTH. Fine.

[The statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Mr. Chairman, I want to thank you for scheduling this hearing today. I feel the creation of Inspectors General at the Departments of Defense, Justice, and Treasury has the potential to provide billions of dollars in savings, and provide better information for the Congress to improve Congressional oversight and appropriation responsibilities.

As we look back on the performance of the Inspectors General, we can say that their creation in 1978 was truly one of the most cost-effective actions that Congress has ever taken. The Inspectors General have more than demonstrated the value of promoting efficiency and economy in the various agencies and departments for which they have worked. I think it's time to unleash them on the remaining major departments within the executive branch.

I do not believe that we should set apart the Department of Defense Inspector General from the role of the present Inspectors General. I am aware of the objec-

tions of the Department of Defense to an independent Inspector General—that national security interests are involved and that we need to protect against disclosure—but I am not convinced that this is the obstacle it has been portrayed to be by DOD witnesses in past hearings. There is not an agency in existence today that does not deal with sensitive and even classified information, yet, I have seen no concrete examples in which an Inspector General compromised an agency by intentional or inadvertent disclosure. For instance, the Inspector General at the Department of Energy has jurisdiction over the national laboratories which provide the technology and production facilities for this country's entire stock of nuclear warheads, and the presence of an independent—I stress independent—Inspector General, has not proved to be a threat to this program.

I call your attention to the Task Force report which considered the prospect for a DOD-Inspector General. Among their recommendations were:

"The advisory role envisioned for the proposed staff officer will require an intimate working relationship with the Secretary and his other senior operational and staff officers. To be effective, this relationship cannot be based upon polite tolerance, but must proceed upon confidence that the mutual goal is to help the Secretary and his subordinates run the Department efficiently, economically and effectively. To requre, as the Inspector General Act does, this staff officer to be independent of the Secretary of Defense would cause him to be viewed as an 'outsider' who serves primarily to provide an independent judgment for other authorities on the manner in which the Secretary and his staff carry out their responsibilities."

If I'm not mistaken, the Inspectors General were created, not to help run the Departments as the task force might suggest, but rather to provide independent judgment on the operations of the Departments. As far as the Inspector General being an outsider serving primarily to provide judgments for other authorities, this also was a major premise for the creation of an Inspector General. An Inspector General is a check and balance, and one I believe this Congress should vigorously fight to maintain.

Last June, when this Committee first began its hearings on the House-passed proposal creating additional Inspectors General, the administration indicated their proposal on this initiative was forthcoming. It appears now—nine months later—that their proposal was "delay, delay, delay". Now we are 174 days past the October 1, 1981 effective date in the bill passed by the House last May. With a $200 billion defense budget, the real result is that DOD has spent some $95 billion since we missed that target date without an independent check and balance on internal controls, program efficiency, fraud/waste/and abuse—the list goes on. Programatic savings are possible within DOD, but history has shown that management team savings are limited by the vested interests present. An independent Inspector General has no such vested interests, and has been shown to be effective in ferreting out increased savings. It is imperative that we act as quickly as we can to create a truly independent Inspector General for DOD and these other agencies. We must provide the resources necessary for him to pick up this challenge. He, or she, must know that the Congress supports an independent judgment on the efficiency and effectiveness of DOD programs. If we are going to expect this DOD-Inspector General to be a real Inspector General, then we must give him the authority, the support, and the independence necessary to do the real job. Otherwise we give the Secretary of Defense a puppy instead of a watchdog.

Chairman ROTH. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Sherick, you are the Acting Inspector General now. Is that a position that is now nonstatutory.

Mr. SHERICK. Yes, sir. I am in a nonstatutory position, Assistant to the Secretary for Review and Oversight.

Senator GLENN. Have you been given any limitation on what your investigations can get into?

Mr. SHERICK. No, I have not.

Senator GLENN. Any areas that are off limits?

Mr. SHERICK. No. In fact, I have been directed into selected areas that the Secretary and the Deputy Secretary decided they wanted me in for management reasons. I have never been turned off.

Senator GLENN. There are none that you couldn't get into? You can go into any operation?

Mr. SHERICK. I have my auditors and investigators in the program going where I want them to go.

Senator GLENN. I would like to continue the line of questioning being pursued by Senator Pryor a moment ago. I think this is the area that concerns the Congress the most, that is, how this authority over an IG might be potentially misused.

We had an example on this committee back some time ago where the Inspector General over in DOE, for instance, did some excellent work in the nuclear weapons area. He was completely free. He had no strings on him at all. This involved a very embarrassing episode for the administration that involved classified materials and literature found in the open stacks out at the DOE Los Alamos library. A young man, Mr. Rotow, had designed his own nuclear weapon out of the open literature out there, and uncovered some items that were erroneously declassified by DOE.

This was something the Inspector General got into. So we have had some experience with Inspectors General looking into some of these sensitive areas.

In the Department of Energy, however, which is involved with highly secret nuclear weapons development, they have no statutory limitations over their Inspectors General, I believe. They have statutory provisions for their Secretary to stop their Inspector General, I believe. Would that be similar to what is being proposed for DOD? Would it differ in any way?

Mr. CARLUCCI. My understanding, Senator Glenn, is that it would differ because our Inspector General would be under the authority, direction, and control of the Secretary of Defense, paralleling the National Security Act. The Energy Inspector General is basically independent of the Secretary of Energy.

Senator GLENN. The Department of Energy statute, there is no provision, an exemption provision or veto provision, over the Inspector General that the Secretary has.

Mr. CARLUCCI. That is my understanding.

Senator GLENN. This would be the same?

Mr. CARLUCCI. No. Defense would be different. Under Senator Roth's bill, the Secretary could veto an investigation or an audit, but he would then be required to make a report to the Congress.

Senator GLENN. To the appropriate committees or the Intelligence Committee if it was a classified matter, I presume?

Mr. CARLUCCI. To the appropriate committees and to this committee. I presume it means the authorizing committees.

Chairman ROTH. If the Senator would yield, we provided that the Secretary would so advise the authorizing committees plus Governmental Affairs and Government Operations. In the event it was an extraordinarily sensitive matter, then it would be the leadership, both majority and minority in both the House and the Senate.

Senator GLENN. If the Inspector General was investigating back, say, 1½ or 2 years ago, matters involving the Stealth technology aircraft which was highly classifed at that time, how would you have handled that?

Mr. CARLUCCI. The Inspector General, and Mr. Sherick in this case, has all the necessary clearances. If he wishes to go into the Stealth area, I am sure that Secretary Weinberger and I would be inclined to let him do so. We might ask him to restrict the number

of people that he would have, to give him the special clearances, but I wouldn't see a particular problem with that.

Where I would see a problem is basically in the military operations area. If you are about to conduct some kind of a highly sensitive military operation or a rescue operation, for example, and the night before they are ready to go the Inspector General decides to step in, then I think the Secretary of Defense needs to have the authority to say, "No, you have got to stay out of there for a day or two."

Senator GLENN. I certainly would agree with you. I think a 100 percent on development projects that are perhaps highly classified, perhaps a report should be made to the appropriate committee here, but a lot of these things, I don't need to tell you, are on a need-to-know basis, and if you have hundreds of people involved with them, whether they are in the Inspector General's office or wherever they are, things may get out, so I would think there are some other areas that you might want to keep the Inspector General out of, where lives are going to be directly at stake in the near term or because in the long term aspects of some sensitive research be at issue that could well put many more lives at risk—maybe millions—if made public.

So I would be concerned that there be a method set up where you could make use of veto authority in situations like that, but that then the appropriate committees of Congress would absolutely be reported to on a classified basis.

Mr. CARLUCCI. I have no problem with that, sir.

Senator GLENN. Mr. Chairman, is that the way you would see this operating?

Chairman ROTH. That is correct, Senator Glenn.

Senator GLENN. I think what we are concerned about, too, are things—let me give one that you had some personal experience with, Mr. Secretary.

A short time back there were cost overruns over in the Pentagon, and there were leaks of this. We had a President of the United States who was absolutely livid of these things being released. We had a Secretary of Defense that was absolutely livid about this. We had a Deputy Secretary of Defense that was absolutely livid and, in fact, took lie detector tests voluntarily.

Senator EAGLETON. Who were all these "livid" individuals?

Senator GLENN. All these "livids" were all over the place, as I recall, from reading the paper.

There were a lot of people, very, very unhappy at that time about these leaks. Would the Inspector General have been kept out if these investigations into these cost overruns had not occurred?

Mr. CARLUCCI. Certainly not. In fact, we used some of our investigative service in that area. Our concern, sir, wasn't over the figures that came out—although the figures were misread and taken out of context.

Our concern was over the process and integrity of the Defense Resources Board. We cannot deliberate on sensitive matters unless we can do so in confidence, particularly in areas of national security. That was our concern.

Senator GLENN. Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Senator Glenn.

Senator Levin?

Senator LEVIN. Mr. Chairman, Secretary Carlucci, when would the veto be used that the Secretary of Defense would have over the Inspector General?

Mr. CARLUCCI. I just described to Senator Glenn a hypothetical example of its use.

Senator LEVIN. Could we, in general, say it would be used for national security purposes, or where national security required it to be used?

Mr. CARLUCCI. Yes.

Senator LEVIN. Is there any reason that we should write that into the statute?

Mr. CARLUCCI. I would have no problem with that.

Senator LEVIN. Then once we write that into the statute, is there any reason, then, why the Inspector General should not be independent in those cases where he is allowed to proceed where the investigation is not vetoed?

Mr. CARLUCCI. I don't see how you could do those at the same time, Senator Levin. We think in order for the Secretary to have the veto power, he has to have the authority, direction and control over the Inspector General.

Hence, the compromise that Senator Roth has formulated, whereby we report to the Congress. I think that should meet the concern.

Senator LEVIN. I'm less concerned, frankly, about the studies and all about the things that are vetoed. I am concerned about the ones that aren't. I am concerned about the independence of the Inspector General for those cases which are not vetoed for national security.

Mr. CARLUCCI. He has full authority to investigate anything he chooses unless it is vetoed.

Senator LEVIN. I am wondering if then we cannot say in those cases where he is permitted to go ahead, that in those cases, he will not be active under the authority, direction and control of the Secretary of Defense, but rather, he will have the same authority that our other Inspector Generals have, which is that he acts under the general supervision of the Department, whatever the language is for all the other Inspector Generals.

Mr. CARLUCCI. Then you are asking him to submit each audit or inspection for the Secretary's review and determination as to whether it is a national security matter?

I just indicated that that would not be a desirable practice. Right now, Mr. Sherick is free to go ahead under his own initiative. It is my understanding, from Senator Roth's formulation from his statement at the outset, that he would simply have the Inspector General notify the Secretary when he was going ahead with an audit or inspection.

The Secretary would then have to exercise his veto, if be chose to do so.

Under your formulation, it appears that he would ask the Secretary to review each audit or investigation individually, which would be impractical and, I think, counterproductive.

Senator LEVIN. Let me go back a step.

Are you assuming the Inspector General and the Secretary would have security clearance?

Mr. CARLUCCI. Yes, sir. He does now.

Senator LEVIN. There is no reason to believe the Inspector General would release information to violate our laws any more than we would believe the DOD Secretary would do so.

Mr. CARLUCCI. No, sir.

Senator LEVIN. He would know whether his own reports would provide a breach of security or not. You don't have to have clearance with the Secretary to——

Mr. CARLUCCI. He might not be the best judge of that particular issue. He would have a clearance, but he might not he the best judge of what else is going on in the Department of Defense that might relate to his particular investigation.

For example, if he is conducting an investigation of a component that is being prepared for military action somewhere as part of a larger military action, he would not know the overall mission, nor would he need to.

Senator LEVIN. You are saying that he could prepare a report which does not breach security but which, nonetheless, should not be made public anyway for some other reason?

Mr. CARLUCCI. Yes, for some other reason relating to national security.

Senator EAGLETON. But not embarrassment.

Mr. CARLUCCI. No. I am talking about national security.

If you want to write in the law that we shall not conceal reports that might embarrass us, I would have no objection.

Senator LEVIN. You would not conceal reports which would not jeopardize our national security?

Mr. CARLUCCI. That is right. Obviously, we are going to have classified reports.

Senator LEVIN. I better repeat the question. I don't think it was clear. You should be able to veto reports which jeopardize national security. I don't think anyone has any question about that; I don't.

The question is, the reports which do not jeopardize the national security and therefore having been cleared by somebody with security clearance, you still want to be able to veto them?

Mr. CARLUCCI. No. We want to be able to veto reports that jeopardize national security.

Senator LEVIN. If the Inspector General has security clearance, he cannot disclose them.

Mr. CARLUCCI. You are confusing classification with national security, sir. The two are not analogous.

We may have a highly classified report that does not jeopardize national security, but by the same token, that does not mean that we would release it to the public or make it available.

Senator LEVIN. Could you have something which jeopardizes national security concerns which is not classified?

Mr. CARLUCCI. I would find it hard to imagine but I wouldn't want to preclude the possibility. I cannot think of one right now.

Senator LEVIN. I cannot, either. Assuming we cannot think of any, there is no reason why we should not allow somebody who has no clearance to determine whether or not to release the report, because that person knows——

Mr. CARLUCCI. You are asking whether he should have security classification responsibility over the whole department; I would say he is not the appropriate official to do that.

Senator LEVIN. Let me go at it in a slightly different way.

Again, my concern is not so much with the reports which we veto; it is the freedom and independence of the Inspector General over the reports which you write which do not violate national security.

On those reports, I see no reason why he should be under the authority, direction and control of the Secretary.

Mr. CARLUCCI. Then we get back to the practical problem.

Senator LEVIN. No. You can have the general standard that applies to all other Inspector General's and then simply say that that report will be submitted to the Secretary and the Secretary may veto all of it or parts of it, if it violates national security.

You could do it that way and preserve the independence of the Inspector General in the preparation of the report.

You don't do it that way. You say that this Inspector General is under the authority, direction and control of the Secretary for all purposes. You put him there. You just don't say for management you might jeopardize national security, or you don't give it to the Secretary to sign off on a report and say that it doesn't violate national security.

You, because of a possibility of a breach of national security, eliminate the usual standard of independence of the Inspector General. That is the problem that I see.

I think we can correct that. I don't think it is a major problem in correcting it. I think that the Chairman has attempted in the bill to do exactly that, as a matter of fact.

I think we can do a little bit better, perhaps, to improve on the bill, but that is my concern.

Senator GLENN. May I ask a question?

Would you object to a limitation being put in the law which is not now in there, as I read it, that says the Secretary can stop an investigation only to protect national security information or to prevent jeopardizing military operations. Suppose we just put it in there, that language?

Would you object to that?

Mr. CARLUCCI. I would like to consider it. On the face of it, it doesn't sound like it would create a problem.

Senator GLENN. I would think from what you said here this morning—I wasn't here all the time—but I would think that that is exactly what you have said. I would think that maybe we could amend the language.

Mr. CARLUCCI. I think we have to work on the language.

Senator LEVIN. That is originally what I understood you to say, is probably that you could go along with it.

The next question is, if he could go along with that, or if he wrote it to not go along with it or not, then the question comes whether or not we should have the general supervision requirement for all Inspector General's.

What, then, why do we have to write a new provision for the Inspector General in the Defense Department different from all the other Inspector General's which, instead of saying that it will be

under the general supervision of the agency head, which is where they all are in civilian agencies, give you a greater authority, "That the Inspector General in the Defense Department would be under the authority, direction and control of the Secretary of Defense"? That is the question.

Mr. CARLUCCI. Let me put it the other way around, Senator Levin. You are saying we are requesting an exception. In fact, all we are requesting is an exception consistent with the National Security Act. It is the other departments which are different from a military establishment, and they have always been. Ours is a hierarchical command structure.

Senator LEVIN. You do seek a different standard. The question is this. Once you and the question Senator Glenn just put to you, that you limit the veto to cases of national security and allow for a veto in cases of national security, which I would——

Senator GLENN. Or military operations.

Senator LEVIN. Or military operations, however you frame it, at that point, you don't have a need for a different standard on all the other operations of the Inspector General.

Mr. CARLUCCI. We would be prepared to look at language, but I think we differ with you on that. I think it is preferable to have him under the authority, direction and control of the Secretary of Defense with the veto and the reporting requirement to Congress. I think it meets all your objectives.

Senator GLENN. As far as equipment goes, other departments have that same problem. DOE has it developing the nuclear weapons.

Mr. CARLUCCI. Yes, but it doesn't have——

Senator GLENN. It doesn't have the military operations.

Mr. CARLUCCI. The military operations, which is an extremely important component. I think we have to be very careful on how we draft legislation in dealing with that.

I do think it is important that the legislation make a distinction between a military organization and the other departments of government.

Senator LEVIN. So do I. I would concur with the Chairman that we have got to be very careful not to breach national security in Inspector General audits and studies in the Defense Department.

The point is that having cured that, or finding a way to cure that in all the other operations of the Inspector General in the Defense Department, I don't see any reason to give the DOD greater control over that Inspector General's operations for all those other operations.

I am just repeating myself. My time is up, and I thank you, Mr. Chairman.

Chairman ROTH. The Secretary has to leave in a very few minutes, so I will yield to Senator Eagleton who has a followup question.

Senator EAGLETON. I have two questions of Mr. Sherick, but I would like Mr. Carlucci here. When those two are finished, then Mr. Sherick and Mr. Carlucci can go to his other engagement.

Let me ask you this, Mr. Sherick. Suppose you received information, either from intelligence sources within the Defense Department or from other external intelligence sources, that Defense De-

partment equipment was being used in the Everglades in Florida in the training of Latin American nationals, and you thought that this violated the law with respect to the use of such equipment.

Would you feel free to make an Inspector General investigation of that if that were brought to your attention?

Mr. SHERICK. Yes.

Senator EAGLETON. Would you clear it with Secretary Carlucci?

Mr. SHERICK. I would advise the Secretary, because I think that is something of very great importance. One of my responsibilities is to keep the Secretary aware and alert of things that I think are significant. I meet with him every day for that purpose.

Senator EAGLETON. Mr. Carlucci, if Mr. Sherick came to you and said he wished to make a probe of such allegations, what would be your reaction to that?

Mr. CARLUCCI. On the facts that you have given us, I would encourage him to do so.

Senator EAGLETON. Here is the second question: Suppose, Mr. Sherick, you received information that Defense Department equipment was being positioned in Honduras on the northern border of Nicaragua, that it was military equipment under the control of the Defense Department, and you thought that that was possibly violative of a whole host of acts including the War Powers Act and other statutes pertaining to the utilization of Defense Department equipment

Would you feel free to probe that line of inquiry?

Mr. SHERICK. Yes.

Senator EAGLETON. Again, would you take that to Mr. Carlucci?

Mr. SHERICK. Yes, I certainly would.

Senator EAGLETON. If that were brought to your attention, Mr. Carlucci, what would be your reaction to Mr. Sherick proceeding with such an investigation?

Mr. CARLUCCI. I would have no problem, providing it did not jeopardize lives or compromise some kind of secrecy. We are obviously talking about a completely hypothetical case, but I would have no issue with that.

Senator EAGLETON. I have another question of Mr. Sherick, but I don't need Mr. Carlucci to stay here. Do you have another question?

Senator PRYOR. I would just like to state, for the record, that I know for myself, and I think I speak for all of us, that there is no intention whatsoever in the establishment of an independent Inspector General to violate national security, or to expose our secrets. I don't think that is what we are trying to do.

But Mr. Secretary, there is a perception here today of a double standard that DOD has taken upon itself, and that you are, I have a feeling, advocating. I hope that is a communication problem that we can smooth out later, but I am very concerned about the fact that you maybe want another standard or a little lower standard, less independent standard for the Department of Defense.

That is my concern, to be honest. I don't want to violate national security.

Mr. CARLUCCI. Senator Pryor, let me assure you that we are not seeking a double standard or a lower standard. We are seeking only to protect national security.

I think Secretary Weinberger's record and my record in the area of audits and inspection, which dates back to HEW days, speaks for itself. We tried, as I indicated at the outset of this hearing, to create an Inspector General function in HEW when it wasn't popular. One of the first things we did when we got to the Defense Department was create Mr. Sherick's position and give him the kind of charter that has been described today. We are not seeking a double standard, but we do think we have a responsibility for national security.

Chairman ROTH. Thank you, Mr. Carlucci. We appreciate your being here today. I have waived any opportunity to ask any further questions.

I would like to make a couple of comments.

One, I agree with Tom Eagleton, that we have no interest in creating an Inspector General that cannot discharge its responsibilities. We recognize that there are some legitimate and genuine concerns about the national security. So what we are trying to do in our legislation, which may not be the perfect answer, is to reconcile two legitimate goals, not to hamstring the operations of the military, but at the same time, insure the taxpayer that their dollar is being well spent.

We are trying to reach that compromise by providing Congress with a responsible oversight position. What we have done is not only provide that the authorizing committees will be informed, but also this committee, which has general supervision, for oversight of the executive branch of the Government.

I would point out that we think that this approach has some real merit, because we have carved into the legislation some actual and functional authority.

I agree with Senator Eagleton that two things are necessary: One is that the Inspector General has authority; and two, that he has the resources.

We ought to take a hard look at the point raised by the distinguished Senator from Missouri earlier. But I want to congratulate you and the others for your willingness to try to work out some language that meets these twin needs.

My major concern is that we have an effective statutory Inspector General, which we have not been able to do to date. You and those at the Pentagon have been cooperative in trying to work out a reasonable approach.

I thank you.

Mr. CARLUCCI. Thank you, Mr. Chairman. I appreciate this opportunity.

Senator EAGLETON. I, too, salute Mr. Carlucci. I think he is one of the finest and most distinguished public officials that has been on the modern scene for the past 20 years. I mean it.

May I ask a question now, of Mr. Sherick?

Mr. Sherick, in earlier testimony, I think it came from Mr. Carlucci who said he assigned you 100 slots for criminal investigation; is that correct?

Mr. SHERICK. Yes, sir.

Senator EAGLETON. Did you fill those 100 slots?

Mr. SHERICK. We have filled many of them. I think we have over 80 people onboard now or selected. Several of the jobs that are unfilled are clerical.

Senator EAGLETON. OK.

Have those 80 or so professional slots that have been filled been performing their duties in making criminal investigations?

Mr. SHERICK. Yes, sir, absolutely.

Senator EAGLETON. Without giving us names or subject matters, have any matters been referred to the Justice Department as a result of investigations made?

Mr. SHERICK. Yes, we had an indictment day before yesterday, actually, in Philadelphia.

Senator EAGLETON. Was the indictment yesterday a sealed indictment?

Mr. SHERICK. No. In fact, we had a press release on it, which I will insert for the record.

[The press release referred to follows:]

[Department of Defense News Release, Mar. 25, 1982]

DEPARTMENT OF DEFENSE CRIMINAL INVESTIGATION LEADS TO 16-POINT INDICTMENT

Joseph H. Sherick, Assistant to the Secretary of Defense (Review and Oversight), announced today that an investigation by the Defense Criminal Investigative Service resulted in a 16 count indictment against a former vice president of Damascus Hosiery Mills, Inc., a company which has supplied socks and boot liners to the Department of Defense. The indictment, announced March 23, 1982 in Philadelphia by the U.S. Attorney for the Eastern District of Pennsylvania, charges Blake Atwood with seven counts of submitting false statements to a Government agency, eight counts of mail fraud and one count of forgery of a Government document.

If convicted, Atwood, 61, a former mayor of Damascus, Virginia, faces a maximum jail term of 85 years and a maximum fine of $79,000.

He is accused of participating in two illegal schemes. One involves the alleged rigging of bids submitted by Damascus Hosiery Mills, Inc., on procurement contracts for heavy-gauge white boot liners used by U.S. troops in extremely cold climates. The second involves Atwood's alleged solicitation and receipt of kickbacks from subcontractors who performed work for Damascus Hosiery Mills on olive green cushion sole socks. Both bids were submitted to the Defense Personnel Support Center in Philadelphia.

The Damascus Hosiery Mills, Inc., of Damascus, Virginia, pleaded nolo contendere on March 10, 1982 to one criminal count of making a false statement. The firm faces a maximum penalty fine of $10,000.

The investigation was a joint effort by the Defense Criminal Investigative Service and the Eastern District of Pennsylvania U.S. Attorney's Office.

Senator EAGLETON. Who got indicted yesterday for what?

Mr. SHERICK. It was a principal of a contractor indicted on 16 counts of bid-rigging in the procurement of arctic boot liners for the receipt of bribes from subcontractors.

Senator EAGLETON. Is that the first public indictment to grow out of these 80 slots?

Mr. SHERICK. It is the most recent one. We also had one earlier, and that occurred after the Defense Criminal Investigative Service was established, but it was based on investigation done by agents transferred into the new agency. The same is true of the most recent indictment.

Senator EAGLETON. Did a public indictment grow out of that hotline thing?

Mr. SHERICK. Yes. That one was 138 counts.

Senator EAGLETON. How many?

Mr. SHERICK. 138 counts. I will insert a press release on that in the record.

[The press release referred to follows:]

[Department of Defense News Release, Nov. 24, 1981]

DEFENSE CONTRACTOR CHARGED WITH FRAUD, CONSPIRACY AND PERJURY

Assistant to the Secretary of Defense (Review and Oversight) Joseph H. Sherick announced today that a 138-count indictment for fraud, conspiracy and perjury was handed down last Friday against two New York State companies which supply cold weather clothing, tents and supplies to the military. The indictment resulted from a 19-month joint investigation by the Departments of Defense and Justice. The indictments charge three company officials with billing the Defense Logistics Agency approximately $3.2 million in interim "progress payments" for labor and material purchases which they allegedly had not performed.

The case is one of the largest ever mounted by the Defense Criminal Investigative Service. The two companies, Issachar Manufacturing Company, Inc. and Reuben Garment International Company, Inc., both of Little Falls, New York, are also accused of supplying wet weather parkas, camouflage coats and other items which they allegedly knew to be substandard.

Kenneth E. Moore, Jr., the president of both firms, was charged with 134 counts of false claims and one count of conspiring to defraud the government. His son, Kenneth E. Moore, III, the vice president and production manager for both companies was charged with perjury and conspiracy. Anthony Freddoso, the plant superintendent, also was charged with perjury and conspiracy.

The indictments were issued in Syracuse, November 20, 1981 by the U.S. District Court for the Northern District of New York. An arraignment is scheduled for December 3, 1981 in Federal Magistrate's Court in Syracuse.

In announcing these actions, Mr. Sherick praised the Defense Criminal Investigative Service and the Department of Justice for their exemplary efforts. He said the Department of Defense will continue to emphasize its efforts to detect and prevent crimes against Department of Defense people, property and resources.

Senator EAGLETON. That guy will be gone for a long time.

Have other matters been referred, pursuant to work done by these professionals, to the Justice Department?

Mr. SHERICK. Yes.

We are working very closely with Justice. One of the first things I did was to get to Justice, and I discussed with them the problem of referrals. And we have been working very closely with the deputy assistant attorney general in the criminal division, Roger Olsen. We set up a liaison group.

One of the problems that we had, as I looked at it early on, was the question of priorities and also the question of deterrence. What I mean is, even though some cases were of a low dollar value, we felt that they should be prosecuted and given priority in order to deter crime or abuse in certain DOD programs.

We have now worked out a semi-formal liaison group representing not only my organization, but the criminal investigative activities in each of the military services to establish priorities with Justice.

We also have a close working relationship with the FBI. Generally, we are in close contact with them in the areas of theft of Government property where we think we have a high vulnerability and also in the area of white collar fraud, and contract fraud.

Senator EAGLETON. Each of the services, the Army, Navy, Air Force, Marine Corps, et cetera, has their own Inspector General-type operation?

Mr. SHERICK. Yes, sir, they both have a criminal investigative agency.

Senator EAGLETON. They engage in investigations of personnel within those services. The focus of your attention, would it be fair to say, insofar as criminal prosecution is concerned, is white-collar crime, and would it also be fair to say the focus is on the defense contractor or defense supplier area?

Mr. SHERICK. Yes.

We, of course, are the criminal investigative force for defense agencies, including the Defense Logistics Agency, which buys common items of supplies and also administers many of our contracts.

So I would say yes, but that does not preclude me from investigating anything in the Department of Defense, as Secretary Carlucci said.

Senator EAGLETON. Have you referred to the Justice Department for consideration for criminal prosecution any matter relating to a corporation that is on the Fortune 500 list?

Mr. SHERICK. Yes, there is at least one under investigation now.

Senator EAGLETON. Is it under investigation and referred to Justice?

Mr. SHERICK. We are working on that one. I don't know if Justice is aware of it.

Senator EAGLETON. Thank you, Mr. Sherick.

Mr. SHERICK. Thank you.

Chairman ROTH. I think the record ought to reflect some of the principal differences between the Inspector General in the bill I introduced yesterday and Mr. Sherick's position as Assistant to the Secretary for Review and Oversight.

For example, the Senate will have to confirm the statutory Inspector General. That confirmation will be by this committee. The bill also requires that the Inspector General be a civilian.

This bill will require that a report be made to the Congress concerning any serious or flagrant problems, abuses or deficiencies related to the administration of programs and operations of such establishment.

We have already mentioned that it would be necessary for the Secretary to report to Congress, the authorizing committees and the Senate Governmental Affairs and House Government Operations Committees or, in certain instances, the leadership on both sides of the aisle of any veto of an investigation or interference with the Inspector General's carrying out his duties.

The statutory Inspector General will be responsible for initiating any investigation he wishes to make subject to the Secretary's veto. That would mean, of course, that the Inspector General is a permanent institution.

Would that be, in your judgment, a fair comparison between the current special assistant situation and the proposed Inspector General under the new legislation?

Mr. SHERICK. Yes, sir, I think that characterizes the major points. The new legislation would base it on statutory permanence. The law would clearly define the responsibilities and authorities of the Inspector General.

Chairman ROTH. Thank you very much, Mr. Sherick, for being with us today.

[Mr. Carlucci's prepared statement and responses to written questions submitted by Senator Roth follow:]

STATEMENT BY FRANK C. CARLUCCI, DEPUTY SECRETARY OF DEFENSE, BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE, ON ESTABLISHING A DEFENSE INSPECTOR GENERAL, MARCH 25, 1982

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today and discuss the creation of a statutory inspector general in the Department of Defense. I am accompanied today by Mr. Joseph H. Sherick, the Assistant to the Secretary of Defense (Review and Oversight).

The Department fully supports the establishment of a statutory inspector general. Secretary Weinberger and I firmly believe, however, that any inspector general legislation affecting the Department of Defense must take into consideration the special nature of the Department's management, organizational structure and mission. The bill proposed by the Chairman of the Committee does take into consideration most of these issues. We, therefore, support it, but believe further clarification of the legislation as it relates to the Department of Defense components is desirable.

In considering any legislation to establish a statutory inspector general for the Department of Defense, we have been guided by three major considerations:

(1) The inspector general should have broad review and oversight responsibility without being required to direct the extensive, routine day-to-day activities of every one of the thousands of auditors, inspectors and investigators located throughout the Department; the Services have and should continue to have the audit, inspection and investigative resources necessary to carry out their operational responsibilities;

(2) The inspector general must be subject to the authority, direction and control of the Secretary of Defense; and

(3) With appropriate notification to the Congress, and a statement of the reasons for his action, the Secretary of Defense must be able to limit audits or investigations of the inspector general into areas impacting upon national security.

These three major considerations are of the utmost importance to the Department. I know from the informal dialogue that has taken place with the Committee that you are generally aware and appreciate that the uniqueness of the Department and its national security mission make special considerations important. Let me be more specific on these points.

First, we believe it is important that the Secretary of Defense have a single official responsible for review and oversight for all of the Department of Defense. This individual must have a close and continuing relationship with the Secretary of Defense and have his support in order to be effective. He should be responsible only to the Secretary of Defense or his Deputy and be independent of all other officials in the Department of Defense. We have indeed created such an official, the Assistant to the Secretary of Defense (Review and Oversight), by administrative action. This has proved to be highly successful and of great assistance to the Department over the past ten months. This year, the Assistant to the Secretary of Defense (Review and Oversight) is authorized a total of 548 personnel, including 401 in the Defense Audit Service, 100 in the Defense Criminal Investigative Service, and 47 for the functions of follow-up, oversight, evaluation and criminal policy. The fiscal year 1982 budget totals $21.5 million.

The resources of the Assistant to the Secretary for Review and Oversight are only a portion of the audit, inspection and investigative resources in the Department of Defense. The balance of the Department's audit, inspection and investigative force of some 16,000 personnel are primarily in the Military Departments and serve the needs of the Service Secretaries and military commanders in performing their missions. It is essential not to disrupt those existing reporting relationships and the important services that are being provided.

With regard to our second consideration, any statutory inspector general must be under the "authority, direction and control" of the Secretary of Defense. This is the traditional language used when defining the relationship between the Secretary of Defense and other offices of the Department, and is embodied in 10 U.S.C. 133. Essentially, the language reflects the requirement for command and control by the Secretary of Defense. It is consistent with the hierarchical commander/subordinate relationship that is at the heart of any military organization and is embodied in the chain of command.

The third major consideration is that the Secretary of Defense must be able to limit any review, inquiry or investigation that the inspector general may initiate which could jeopardize national security. An example of this could be the planning of a rescue mission or any other sensitive operational mission in which an untimely investigation could imperil lives, as well as national security. Similarly, an audit or investigation might inadvertently disclose a sensitive research and development program and likewise do irreparable harm to our national security by depriving the U.S. of a strategic or tactical advantage.

We recognize that the need for this limitation authority would only arise very rarely, but it could be of extreme importance when it did. Therefore, we believe it imperative that any legislation provide this explicit authority to the Secretary. To assure that the Secretary is accountable for his actions, we favor a statutory requirement that notification and reasons be given to appropriate congressional committees in any case where the Secretary uses such limitation authority. Such a notification procedure would have to have appropriate safeguards to insure that the procedure itself does not disclose sensitive information relating to intelligence, counterintelligence, sensitive operational plans, ongoing criminal investigations or other information the disclosure of which may constitute a serious threat to national security.

With these considerations in mind, it is clear that we cannot support H.R. 2098 as passed by the House or S. 1932, a similar bill.

With respect to the draft bill prepared by Chairman Roth, which was recently made available to us, we are pleased that it is explicitly consistent with two of our main concerns. It makes the Defense Inspector General subject to the authority, direction and control of the Secretary of Defense and permits the Secretary to limit activities of the inspector general in those rare instances when it is appropriate, subject to the notification process discussed earlier.

We believe that the bill proposed by Chairman Roth is also intended to meet our other major concern--the need to give the Defense Inspector General broad review and oversight responsibility but not operational control over the Service audit, inspection and investigative units, and thereby recognize the special nature and national security mission of the Department of Defense. This insures that the Service Secretaries and military commanders

have the assistance, through their own audit, inspection and investigative units, to carry out their operational responsibilities.

While the Chairman's bill initially gives the Defense Inspector General the same duties and responsibilities that all other inspectors general currently have under Section 4 of the 1978 Inspector General Act, it subsequently provides some additional duties and responsibilities and places restrictions on the exercise of some of the general authority originally granted. Generally, the functions of the Defense Inspector General are interwoven with those of the civil agency inspectors general. We would prefer that the authority, duties and responsibilities of a Defense Inspector General be delineated in a section that is separate and distinct from those dealing with civilian agency inspectors general. Moreover, we believe it is essential that there also be explicit recognition of the relationship between a Defense Inspector General and the audit, inspection and investigative organizations of the Military Departments. This can be accomplished by indicating that the Defense Inspector General shall monitor and evaluate any and all audits and investigations relating to the programs and operations of the Department and insuring there is appropriate follow-up by management. It should also give him authority to initiate, conduct and supervise, through the Defense Audit Service and Defense Criminal Investigative Service, such audits and investigations as he deems appropriate. We feel such a change to the bill needs to be made and are prepared to supply appropriate wording to the Committee. The legislative history needs to be clear on this very important point.

Chairman Roth's bill properly recognizes the importance of protecting sensitive information in inspector general reports that would be required by law. However, it would permit such reports to include information with

respect to part of an ongoing criminal investigation, if the information has been included in a public record. We believe this exception could be detrimental to ongoing criminal investigations, and recommend that it be deleted from any bill.

In addition, the Assistant Secretary of Defense (Comptroller) presently provides guidance for all Department of Defense auditors with regard to such matters as audit coverage, standards, staffing and training. We believe that this responsibility for audit policy should remain with the Comptroller as it is now by statute.

I want to stress that although Secretary Weinberger and I support the establishment of a Defense Inspector General, we view such an action as only one part of a much broader effort to improve the way DoD conducts its business. We have taken actions in a number of areas that have similar objectives. These include:

- improving the Planning, Programming and Budgeting System and strengthening the Defense Resources Board
- beginning action on 32 specific management initiatives designed to improve Defense procurement practices. (These include improving our budgeting, funding adequate test hardware, using multiyear procurement, providing more economic production rates, encouraging defense contractor capital investment, improving productivity, implementing preplanned product improvement, and emphasizing increased competition)
- establishing a Defense Council on Integrity and Management Improvement to address difficult management improvement topics, develop workable solutions, and disseminate innovative ideas and techniques throughout DoD
- holding weekly Secretarial Performance Reviews to permit Secretary Weinberger and me to examine major programs in detail and give us the ability to act in a timely way.

Mr. Chairman, we look forward to working with this Committee to provide Defense with an appropriate statutory Inspector General who can be of significant help as part of a coordinated overall DoD program to improve management and reduce or eliminate fraud and waste in the Department.

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., May 13, 1982.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciated the opportunity to appear before your Committee on March 25, 1982 to discuss S. 2274, the Inspector General Amendments of 1982.

I am enclosing responses to the additional questions posed in your letter of April 30, 1982, even though the Senate has just adopted your amendment adding a provision to the Department of Defense Authorization Act, 1983 establishing a statutory Inspector General in the Department of Defense.

I am pleased by your effort toward bringing about a statutory Inspector General, which we strongly desire as part of our actions to improve the way the Department conducts its business.

I appreciate the opportunity to provide further information on this important subject, and look forward to working with you on this matter as the Inspector General provision is considered further by the Congress.

Sincerely,

FRANK C. CARLUCCI

Enclosures.

WRITTEN QUESTIONS OF SENATOR WILLIAM V. ROTH, JR., FOR DEPUTY SECRETARY FRANK C. CARLUCCI

Question No. 1. The bill sets out many of the duties and responsibilities of the 1978 Act regarding Inspector General functions. It also adds additional duties and responsibilities. What changes will be required in the audit and investigation functions at DoD and the Services to effectuate these duties and responsibilities?

Answer. Except for audit policy, which is presently the statutory responsibility of the Department of Defense Comptroller, the duties and responsibilities of the present Assistant to the Secretary of Defense (Review and Oversight) are basically similar to those outlines in S. 2274. As you know, we would prefer that responsibilities for audit policy remain with the Comptroller. We do not believe that it will be necessary to make major changes in the audit and investigative functions in the Department of Defense and the Services as a result of S. 2274.

Question No. 2. Currently DCAA (Defense Contract Audit Agency) audits are provided only to DoD contracting officers and DCAA officials. DCAA itself must ultimately report to and is under the direction, authority and control of the managers for whom they are conducting audit work. If a contracting official chooses to ignore the audit, even if the claim reimbursement is questionable, the DCAA is effectively left without recourse. Given the fact that the primary defense against contract fraud is an aggressive audit program, what is being planned to make DCAA more effective and what role could the proposed Inspector General plan in making this office more effective?

Answer. Although DCAA auditors serve in an advisory capacity to the contracting officer's team, they are not under the authority, direction and control of the managers for whom they conduct audit work. The Director of DCAA reports directly to the Assistant Secretary of Defense (Comptroller).

Under the provisions of DoD Directive 5000.42, Policy for Follow-up On Contract Audit Recommendations, contracting officials are required to submit significant disagreements concerning contract audit recommendations to an independent official review board or panel for review and recommendation. DCAA has a responsibility for identifying instances where such a review was required, but did not actually take place.

Where DCAA experiences serious problems or disagreements with contracting officers, such problems are generally elevated to the DCAA headquarters level for resolution with senior management officials at the buying command.

DCAA does have initiatives underway to increase its effectiveness, such as testing vulnerability assessment techniques to improve its targeting of audits and zeroing in on labor mischarging practices. The proposed Inspector General is charged with evaluating and monitoring contract audits and should thereby be able to assist in improving DCAA's effectiveness.

Question No. 3. This bill provides that violations of the uniform Code of Military Justice be reported to the Secretary of the military department or the Secretary of Defense. Do you envision the Secretary's veto power extending to the Inspector General's reports to the Attorney General on violations of federal criminal law?

Answer. No. We believe that the Secretary's authority to prohibit the Inspector General from initiating, carrying our or completing any audit or investigation would not extend to reports to the Attorney General or violations of federal criminal law. As outlines in testimony before the Committee, this authority would only be used in cases where national security could be jeopardized, such as the conduct of time-sensitive military operations.

Question No. 4. A 1980 Task Force Report analyzing the audit, investigation, and inspection resources at DoD concluded that current DoD fraud efforts are not adequately coordinated between services. We know that military law enforcement agencies have a wide variety of responsibilities which would clearly conflict with the Inspector General function: security, counter-intelligence, background checks, military offenses and the like. The services clearly require adequate resources to address these problems. However, fraud investigations, procurement, bribery, conflict of interest must be reviewed free from command interference. Will a sufficient staff be provided to the Inspector General, if created, to accomplish this task? Will the Inspector General have the authority for investigating all instances of fraud within DoD independent from command interference? This is important because with these investigations and with the input from audit resources, the Inspector General would be able to develop a comprehensive DoD posture against fraud.

Answer. The Assistant to the Secretary (Review and Oversight) is most concerned with an effective and coordinated approach to attack fraud against the DoD. This requires adequate staffing and close coordination with the antifraud efforts of the military department audit, inspection and investigation units. Fraud against the DoD will be a major concern of a DoD Inspector General. The Inspector General will have the authority to investigate all instances of fraud independent from command interference. Although the Inspector General will have such authority, in most cases, fraud involving specific service members or against a specific Military Department will normally be investigated by the appropriate investigative unit of the component itself. The DoD Inspector General will have a responsibility to ensure that investigations throughout the Department are conducted independently and free from command influence. Sufficient resources and staffing will be made available to the DoD Inspector General to fulfill these functions.

Question No. 5. The contract audit function is clearly a function of a statutory Inspector General. Many existing Inspector General offices perform a contract audit function and all are uniform in their belief that contract audits are a major tool in waste and fraud detection. If DCAA (Defense Contract Audit Agency) is not included in the transfer of offices how can we be assured that the contract audit presence is being effectively managed and reviewed by the Inspector General?

Answer. It should be noted that DCAA performs most contract audits for the Federal Government, including contract audits for existing Inspector General's in other departments who reimburse DCAA for such services. DCAA has a system for reporting cases of potential fraud, waste or abuse to the Inspector Generals and to the Justice Department for investigation.

The DoD Inspector General will have oversight and evaluation responsibilities for DCAA, even if the organization is not tranferred to the Inspector General. This will assure objectivity in the evaluation of DCAA and its management.

Question No. 6. What plans are there currently to sufficiently staff other audit operations, particularly in view of the larger Defense budget?

Answer. Between fiscal year 1982 and 1983, we are requesting an increase of 111 personnel for the Defense Audit Service and Naval Audit Service. Army and Air Force Audit Agency remain level. We are also requesting an additional 475 personnel in fiscal year 1983 for the Defense Contract Audit Agency. Staffing requirements for fiscal year 1984 and beyond are presently being reviewed in the DoD programming and budgeting cycle.

Question No. 7. Prior GAO reports noted limitations placed on the work of Defense internal auditors. Defense officials agreed to remove those limitations, but preliminary survey work indicates auditors still seem to steer away from some areas, particularly sensitive areas such as simulated combat performance and readiness. What is being done in this area?

Answer. Past reviews have indicated that internal auditors have steered away from some potential audit activities. There are currently no restrictions placed on internal auditors. To the extent that any specific problems are identified in this area, we would, of course, assure that they were remedied. A Defense Inspector General could establish his own audit program with priorities of his own choosing, not subject to any such limitations.

Question No. 8. What was spent on auditing defense programs for fiscal year 1981? How much money was saved or recovered?

Answer. DoD internal audit organizations (Defense Audit Service, Army Audit Agency, Naval Audit Service and Air Force Audit Agency and the military exchange audit organizations) incurred fiscal year 1981 operating costs of $103.9 million. The potential monetary benefits from their efforts amount to $1.5 billion. (Neither the costs nor benefits above reflect inclusion of internal review organizations in the Army or Navy, since these are being collected and are not presently available.)

It must be emphasized that these monetary benefits are potential benefits. They reflect auditors' estimates of benefits that could accrue if their recommendations are accepted and corrective actions are accomplished. Most of these benefits relate to avoiding or reducing specific operating costs in the future. Our recently established follow-up systems will enable us to track management actions on recommendations and determine savings actually achieved.

Contract audits are accomplished in DoD by the Defense Contract Audit Agency (DCAA) which had fiscal year 1981 operating costs of $121.4 million. During the year, DCAA evaluated contractor prepared pricing proposals valued at about $204.6 billion and examined contractor recorded and reported expenditures of $39.0 billion. The Agency's pricing proposal evaluations resulted in $24.1 billion in questioned costs, of which $5.9 billion was sustained through negotiations. Questioned incurred costs totaled $1.1 billion, of which $738.1 million was sustained. DCAA's reviews of the efficiency and economy of contractors' operations provided opportunity for $249.8 million in savings to the government, and defective pricing reviews resulted in downward price adjustments of $47.4 million on existing government contracts.

Question No. 9. What is the status of the DoD audit follow-up plan announced by the Department in August 1981? The plan called for systematic tracking of all significant audit recommendations.

Answer. DoD Directive 5000.42, "Policy for Follow-Up on Contract Audit Recommendations," dated August 31, 1981, requires each Military Department and Defense Agency to establish procedures for ensuring timely resolution of contract audit recommendations. The Directive requires that significant contract audit recommendations be tracked from issuance through final disposition, that differences between auditors and contracting officials be promptly resolved, and that the rationale for final disposition of audit recommendations be well documented. DoD Directive 5000.42 also provides for semiannual follow-up status reported to the Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)) from the components, and periodic internal evaluations of the effectiveness of components' follow-up systems. The first semiannual reports were recently provided to the ATSD(R&O), and initial internal evaluations are now underway in the Military Departments and Defense Agencies. Although the components are still in the process of refining their follow-up systems, we feel we are making progress toward achieving the comprehensive contract audit follow-up system originally planned.

DoD audit follow-up efforts also encompass findings and recommendations made by the General Accounting Office (GAO), the Defense Audit Service (DAS) and the Army, Navy and Air Force audit organizations, plus internal review reports. DoD Directive 5000.41, first issued in January 1981 and revised in March 1982, requires each Military Department to establish procedures for ensuring prompt, constructive, and well-documented resolution when audit findings and recommendations are disputed by managers. A similar process is managed by the OATSD(R&O) to resolve disputed DAS findings and recommendations, as well as to ensure responsive DoD replies to GAO efforts. Likewise, DoD Directive 5000.41 requires thorough follow-up on all agreed-upon findings and recommendations. The Military Departments are tracking Service audits and internal review reports, and the OATSD(R&O) maintains an Audit Management Information System (AMIS) to track follow-up status on GAO and DAS items. For GAO reports, for example, we are currently tracking 264 reports with 452 recommendations made since October 1980. During the remainder of this calendar year, we will systematically expand this coverage to include all GAO reports directed to DoD since January 1979, plus pick up GAO and DAS reports made during the balance of fiscal year 1982.

Question No. 10. The Army, Navy and Air Force were directed in August of 1981 to establish fully compatible subsystems for their own internal audit and internal review reports. This directive was in response to strong pressure regarding DoD policy on Audit Resolution. What is the current status of these systems?

Answer. In response to DoD Directive 5000.41, which was first issued in January 1981, the Army, Navy and Air Force established audit resolution and follow-up systems to cover Service audit reports and internal reviews. The Office of the Assistant to the Secretary of Defense (Review and Oversight) (OATSD(R&O)) established similar systems for Government Accounting Office (GAO) and Defense Audit Service (DAS) audits. Implementing directives, instructions, and regulations from the Mili-

tary Departments were reviewed by the OATSD(R&O) to ensure compliance with OMB and DoD guidance. These systems are currently being revised and developed further in response to the reissuance of DoD Directive 5000.41, which was signed by Secretary Weinberger on March 15, 1982. This Directive requires semiannual reporting on audit resolution and follow-up actions, and directs that each DoD component audit organization review the efficacy of that component's resolution and follow-up system on a periodic basis. In addition, the OATSD(R&O) will closely review the revised documentation due from the Services in June in response to the revised Directive 5000.41. Through this review, as well as other ongoing efforts, we will ensure that fully adequate efforts are made. While some systems are not yet fully enough developed to ensure the degree of aggressive audit follow-up we seek, we have made good progress and efforts are underway to achieve the full range of capabilities needed in this important endeavor.

Question No. 11. What authority would the DoD Inspector General, in your opinion, have to supervise and utilize manpower from existing DoD law enforcement agencies (OSI, CID, NIS) when DCIS manpower is insufficient?

Answer. Under the proposed bill, the DOD Inspector General could "conduct, supervise and coordinate audits and investigations relating to the programs and operations of such establishment." We presume this means he could supervise and use manpower from existing DOD law enforcement agencies. We recommended in our testimony that the relationship between the DoD Inspector General and the audit, inspection and investigative organizations of the Military Departments be more clearly delineated to recognize the separate responsibilities of the Military Departments. This could be done by indicating that the DoD Inspector General shall monitor and evaluate audit and investigations and insure appropriate follow-up. The bill should also give the DoD Inspector General authority to initiate, conduct and supervise, through the Defense Audit Service and Defense Criminal Investigative Service (DCIS), such audits and investigations as he deems appropriate. Under our proposal, the DoD Inspector General could utilize his own DCIS manpower and if that were insufficient, could request the Service components to undertake an investigation on their own or in collaboration with DCIS. The Inspector General could also request that personnel be detailed to DCIS from Service investigative organizations. We expect that there would be full cooperation. In the final analysis, the Secretary of Defense, at the request of the Inspector General, could direct that manpower be made available to the Defense Inspector General.

Question No. 12. In your view, what authority should the DoD Inspector General exercise over the audit and investigative agencies now operating in the Services? Should the Inspector General have authority to order the service agencies to conduct specific audits or investigations? Should monitoring and enforcement of audit policy in the service agencies be an Inspector General responsibility?

Answer. The DoD Inspector General should be responsible for monitoring and evaluating audit and investigative organizations in the Services. Also, he should be responsible for evaluating compliance with audit policy.

We believe that the Service Secretaries and military commanders should have the review assistance they require to perform their missions and, to that end, should retain operational control of their audit and investigative organizations. The DoD Inspector General should have authority, using his own organizational elements, to conduct any audit or investigation in the Department he chooses to undertake, subject only to the authority, direction and control of the Secretary of Defense. Also, the DoD Inspector General should be authorized to direct and coordinate, with the approval of the Secretary, DoD-wide audits, investigations or surveys of selected areas utilizing assets of the Military Departments when necessary.

Question No. 13. How many personnel and how large a budget should be assigned to the DoD Inspector General in your view? Currently, there are only 400 to 450 people under the direction of Mr. Sherick. Is this level adequate?

Answer. Currently, in the DoD budget and programming cycle, we are examining the budgetary and staffing needs of the Assistant to the Secretary of Defense (Review and Oversight) and his components. These form the basis of the DoD Inspector General's staff as envisioned by the Committee and included in S. 2274. Although still in the early stages of the 1984–1988 outyear programming cycle, we expect that the office will need to grow from the fiscal year 1983 level of approximately 450 auditors and 100 investigators to a total of about 600 auditors and 400 investigators in fiscal year 1988. These numbers are presently undergoing careful assessment based upon the anticipated workload and the ability to recruit and train new personnel.

Question No. 14. At the present time, to which officials do the heads of the military audit operations report?

Answer. The reporting chain for DoD internal audit organizations is summarized below:

Army Audit Agency reports to Secretary of the Army and Chief of Staff of the Army.

Naval Audit Service reports to Under Secretary of the Navy.

Air Force Audit Agency reports to Secretary of the Air Force.

Chairman ROTH. At this time we call forward Mr. Schmults, the Deputy Attorney General.

Mr. Schmults, welcome to the committee.

As you may have heard, with respect to the earlier witnesses, you may summarize your testimony if you choose.

TESTIMONY OF EDWARD C. SCHMULTS, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. SCHMULTS. Thank you, Mr. Chairman.

My statement is short. If it is acceptable to you, I think I would just like to go through it. Would that be all right?

Chairman ROTH. Sure.

Mr. SCHMULTS. I appreciate the opportunity to discuss with the committee the creation of an Inspector General at the Department of Justice. The administration is committed to establishing a statutory Inspector General's office which is carefully structured to take account of the unique responsibilities of the Attorney General. An effectively designed office will supplement the mechanisms already in place which monitor and investigate the conduct of the Department's employees. The control of waste, the maintenance of high standards of conduct, and the assurance of integrity in the Department's processes, are goals we share with the committee. The committee's proposal recognizes the need to structure carefully an Inspector General at Justice.

On the other hand, blanket extension of the Inspector General Act of 1978, would not only be inappropriate, but would weaken the role of the Attorney General in his critical responsibilities of directing the law enforcement and litigation functions of the Government. Thus, we believe that any Inspector General proposal must be carefully refined so as not to infringe upon the Attorney General's role as the chief law enforcement officer of the Nation. Proposals such as H.R. 2098 and S. 1392 fail to do this.

The functions of the Department, to investigate, to prosecute, and to institute, litigate, and settle lawsuits, require that broad based discretion be entrusted to the Attorney General. The Attorney General must have clear authority and he must be accountable. It is his responsibility to assure that the activities of the Department are conducted within the confines of the Constitution and the law, and that the Department adheres to the highest of professional standards.

We believe that the role of the Inspector General at the Department of Justice must be carefully circumscribed in regard to investigatory activities and that the conduct of investigations must remain the sole responsibility of the Attorney General.

Under the 1978 Act, the role of the Inspector General includes providing policy direction for investigations and conducting investigations he determines appropriate. Under such circumstances, we

believe that the role of the Inspector General at Justice must be confined to audit related activities.

Furthermore, in the Federal Government's efforts against waste, fraud and abuse, it is important to remember that mechanisms addressing such matters in one agency are not necessarily transferable to an agency with different functions and mandates.

The Inspectors General were not intended to be law enforcement officers, nor were they intended to become involved in reviewing basic discretionary determinations of an agency.[1] Therefore, because the major role of the Department is to investigate or not investigate, to litigate or settle, to render advice on complex constitutional and legal matters, the Department of Justice Inspector General needs to be focused in a way that will not interfere with such decisions.

This is not to say that the Attorney General's discretion and the performance of the Department in investigations and litigation is not, or should not, be subject to scrutiny. In fact, the Department, properly so, is perhaps the most scrutinized agency of the executive branch. The judicial branch, in addition to reviewing the positions advocated by the Department in litigation, closely reviews the conduct of those who perform the criminal investigations. This accountability, a result of our constitutional form of government, creates the necessary incentives to exercise good judgment.

The committee proposal recognizes, in many important respects, the unique role of the Attorney General as the chief law enforcement officer of the Nation.

We believe that an Inspector General can serve most effectively if his duties and obligations within the Department are precisely set forth. Under such circumstances, the Justice Inspector General will be most able to serve the role envisioned by the 1978 act, while at the same time preserving the responsibilities of the Attorney General.

We believe the proposal should clearly distinguish the Justice Inspector General. All his responsibilities and duties should be clearly set forth within one section. To insert a Justice Inspector General within the text of the 1978 act, subject to certain exceptions in another section, will distort and weaken the present mechanism at the Department.

The existing mechanism responsible for the investigation of personnel misconduct is accountable directly to the Attorney General. Inquiries are conducted independently and with authority beyond that of any present Inspector General. The credibility and effectiveness of this mechanism has not been subject to debate. It is therefore unwise to group a Justice Inspector General with provisions relating to other Inspectors General. We believe it essential that one section be devoted solely to the Inspector General at Justice and that it recognize the need to coordinate with the Office of Professional Responsibility.

The committee's proposal regarding the issuance of a subpena should be made subject to Attorney General approval. To confer independent subpena authority on the Inspector General would sig-

[1] 127 Cong. Rec. H7575 (daily ed. Oct. 21, 1981) (remarks of Rep. Brooks). See also S. Rep. No. 1071, 95th Congress, 2d Sess. at 14.

nificantly weaken the authority of the Attorney General. Requiring the Attorney General to approve the subpena of a Justice Inspector General is no more than the exercise of his present function to insure that subpena issued by government employees, especially those at the Department of Justice, have been issued within the confines of the law.

We are also concerned that the committee's provision relating to the restriction of the Justice Inspector General from reviewing discretionary determinations of Department officials is limited to "policy" decisions. The decision to settle a case, the determination to seek an appeal, the directing of agents to particular areas in the course of an investigation, are not, by their nature "policy" decisions. These decisions involve representation of client agencies or the enforcement of the criminal law. They are discretionary determinations of the Department of Justice. We recommend therefore that the words "policy decisions" be replaced with the word "activities."

We also object to the draft's provisos which permit information regarding an ongoing criminal investigation to be included in a report to Congress if the information has previously been part of a public record.

While we envision limited circumstances where a Justice Inspector General will be involved in ongoing criminal investigations, we believe that the release of information by any Inspector General regarding an open investigation is inconsistent with effective law enforcement. The appearance of information can often be traced to a target of an investigation because it may be in the interest of the very individuals being investigated to cause premature disclosure. The presence or confirmation of such information in a report to Congress creates the potential of compromising an investigation or prosecution, whether it be by disclosing the target, endangering an agent or revealing an informant. Additionally, the possibility of prejudicial pretrial publicity would be increased by such a provision. Not only will the integrity of any criminal investigation be challenged, but that of an audit as well.

We also believe that the committee proposal to merge the evaluation units of the Department and its bureaus into the Inspector General office needs to be reassessed. The evaluation units of the Attorney General are necessary to meet specific and changing management initiatives, including budget requirements, allocation of resources and organizational arrangements. They are part of management and should remain separate from an Inspector General. The audits conducted by the Inspector General are concerned with a review of program operations in order to ascertain compliance with a unit's mandate and the detection of waste, fraud, and abuse. These functions should remain distinct.

We believe that the committee's proposal, if modified to meet the concerns I have discussed, will put in place a strong Inspector General, with the necessary degree of independence and authority so that he can properly execute his mandate, while not infringing in any way upon the role of the Attorney General.

We appreciate the committee's efforts, and we look forward to working with you as this legislation progresses.

That is the end of my prepared statement, Mr. Chairman. I would be happy to answer any questions which you or Senator Eagleton might have.

Chairman ROTH. Senator Eagleton?

Senator EAGLETON. I do have one question, Mr. Schmults. Let's assume that the committee adopts every suggestion and recommendation that you have just made in your prepared statement. Let's assume that the committee retains, verbatim, the language on page 7 of the typewritten Roth bill, and I will read it into the record at this point. I am talking about subsection B at the bottom of typewritten page 7. It reads:

> Notwithstanding any other provision of this Act, the Inspector General of the Department of Justice is not authorized to conduct audits or reviews concerning policy decisions arising from the exercise of the discretionary authority of officials at the Department with respect to law enforcment, litigation, legal advice and corrections. Policy decisions referred to in the preceding sentence include policy decision relating to the establishment of law enforcement priorities and resource determinations ancillary thereto; the exercise of prosecutor discretion, the negotiation and settlement of legal actions; determinations concerning pursuing an appeal; Federal correction institutions, positions taken on legislation and the rendering of legal opinions.

Let's assume that we have that section, and we modify it a bit because I think you had some suggestion on the phraseology. If we take every suggestion you make and then have this subsection, my question is. What the hell is there for the Inspector General to inspect?

Mr. SCHMULTS. If we step back and look at the whole concept of what the Inspector General does to really detect fraud, waste, and abuse in Government grant programs, in the letting of contracts, in the expenditures of money, and things like that, in our view, the Inspector General, in the other agencies, was not set up to review the principal discretionary activities of the head of the agency.

At the Department of Justice, Senator Eagleton, by and large, we do not have any grants. We do not let contracts, and so you are correct.

While there will be work for the Inspector General to audit in terms of how we handle our finances, travel, the minor contracts we do let for computer systems, and things like that, there will be an audit responsibility for the Inspector General. There will be work to do. But I think the point that you have made is an excellent one. That is really the point that I have tried to make; that the principal function at the Department of Justice to make discretionary litigation and law enforcement decisions is not really one that the Inspector General ought to be looking at.

Senator EAGLETON. This may surprise you. I was never all that keen about setting up an Inspector General in the Department of Justice because of some of the reasons that you have just described. There was a time when the Department of Justice did have a fairly big grant program at LEAA.

Mr. SCHMULTS. At LEAA.

Senator EAGLETON. What is it down to?

Mr. SCHMULTS. There is no LEAA; in April, LEAA will be gone.

Senator EAGLETON. That is gone, so you are pretty well out of the grants business or soon to be out of it.

I suppose there is something to be said for symmetry. Other cabinet offices have an Inspector General, why not Justice? OK. If we want to find some nice old lawyer and call him the Inspector General and let him serve out his twilight days over there and say we have done it on an asymmetrical basis, that is all right. But I agree with you. I don't think the Inspector General should be rummaging around in the Department of Justice.

For instance, I don't think the Inspector General should be monitoring a dispute between Mr. Puccio and a U.S. Attorney from New Jersey. Those things exist within the Justice Department at any time. There is a thing called prosecutorial judgment. I don't think that is the province of an Inspector General to be monitoring or refereeing that dispute.

The person that ought to be refereeing is you or Mr. Smith.

So I don't see an Inspector General in that area. I am just not all that taken, with the idea. Since LEAA is soon to go or about gone, I don't know what this guy is going to do except paper clips and carbon paper and what-have-you. I guess we want one because everybody else has got one.

Chairman ROTH. I only have one question, Mr. Schmults.

According to GAO testimony in 1980, the level of staffing for the Justice Department internal audits function was a cause for deep concern. GAO pointed out that the Justice Department has reorganized or moved its internal operations six times in 13 years. They noted that about half have been reassigned to other Justice components.

What is the current status of Justice, internal audit units with regard to staffing and coordination? Changes have been made since 1980, and perhaps going to the question raised by Senator Eagleton, what does it audit?

Mr. SCHMULTS. Mr. Chairman, we tried to find an answer to the question about the number of reorganizations and the concern that GAO had. We were unable to get any response from them.

I will attempt to verify that in fact, six or eight, whatever the number was, reorganizations took place in the past 13 years. We did just move, in this new administration, the former or a good number of the former, LEAA audit staff into the Justice management division audit staff. There is a continuing responsibility to audit the LEAA funds that are in the pipeline and are, indeed, in the hands of some of the local communities. This is performed to insure that they are spending grant funds in accordance with the purposes for which they were intended.

Our audit staff conducts routine audits that any department would conduct of the financial affairs of its operating agencies and bureaus and their budgets and things like that.

But Senator Eagleton—we have some grant money in juvenile justice. That is still before the Congress. We are unsure of its future.

Senator EAGLETON. How much is left in that?

Mr. SCHMULTS. I am not sure, Senator Eagleton. Congress is talking about $60 or $70 million. The administration proposal is to zero that out. The President's budget would not have any of that, so it is unclear as to how any of that is going to come out. There would be

some audit functions. We do support the concept of an Inspector General at the Department of Justice.

There would be work for an Inspector General to do.

But the point I think, I hope I have made, is that we have a very different principal mission than other agencies, not even a very important part of it is letting contracts or grants. But we have an audit department. It works. It does a good job, and it will be transferred to the Inspector General's Office.

Chairman ROTH. That is all the questions I have. We thank you for being here today.

Mr. SCHMULTS. Thank you, Mr. Chairman. Thank you, Senator Eagleton.

Chairman ROTH. Our final witness is Margery Waxman, who is Deputy General Counsel of the Department of Treasury.

TESTIMONY OF MARGERY WAXMAN, DEPUTY GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY PAUL TRAUSE, INSPECTOR GENERAL

Ms. WAXMAN. Thank you, Mr. Chairman.

In accordance with your previous instructions, I will give a very shortened version of my prepared testimony. I am pleased to have the opportunity to appear before this committee and to provide the views of the Treasury Department concerning the proposed amendments to the Inspector General——

Senator EAGLETON. Could I interrupt and ask one question?

Ms. WAXMAN. Yes.

Senator EAGLETON. Ms. Waxman, what grants does the Treasury Department manage—general revenue sharing?

Ms. WAXMAN. Revenue sharing is the only grant program that we have.

Senator EAGLETON. That is your only grant program. Are there other things to inspect?

Ms. WAXMAN. We do have an Inspector General. I want to introduce Paul Trause, who is our current Inspector General.

Mr. TRAUSE. Most of our time is spent in looking at internal controls of Treasury systems, particularly those involving the receipt and disbursement of money by Treasury. For example, we would examine the methods through which IRS or customs handles receipts to minimize the potential of theft and to insure proper cash management. In the Bureau of Governmental Financial operations we would examine the controls over the issuance of government checks, including the raw stock. We would also conduct financial audits of various types of funds for the Secretary including the Exchange Stablization Fund.

Senator EAGLETON. How big is your staff?

Mr. TRAUSE. There are approximately, throughout Treasury, excluding IRS, 200 auditors. Of those 200 auditors, approximately 15 report directly to me. The others report to me on a project which have department-wide significance. In these cases the report would be issued by my office.

Senator EAGLETON. You said you excluded IRS; have they got their own Inspector General?

Mr. TRAUSE. No; but they have a much larger number of auditors.

Senator EAGLETON. They have a hell of a lot of auditors, but do they have any auditors auditing the auditors?

Mr. TRAUSE. In the internal function, and I am just guessing, I believe we are talking about a much more significant number of people. I am not sure about the exact number.

Senator EAGLETON. Thank you.

Chairman ROTH. Thank you, Senator Eagleton.

Miss Waxman, do you want to proceed?

Ms. WAXMAN. Yes; thank you.

The Treasury Department supports the establishment of a statutory Inspector General and agrees with the general thrust of the chairman's bill.

In fact, we have had an administrative Inspector General since we created the Office of Inspector General in July 1978.

We are very proud of the way in which that office has functioned. During the fiscal year 1981, the Department's internal auditors produced over a half a billion dollars in audit penalties, recoveries and additional revenues; $2 million in questioned costs disallowed thorough audits and approximately $9.7 million in possible savings due to new procedures.

Further, the Department's internal investigators completed about 8,500 investigations.

These investigations result in over 210 prosecutions and over 1,900 administrative disciplinary actions. The investigations also produced over $8.8 million in penalties, recovery, and additional revenues. These accomplishments and the future of the Inspector General's Office must be viewed in the light of the Treasury's mission.

Unlike most departments with statutory Inspectors General, the Treasury Department, with the exception of the revenue sharing program, administers neither grant nor entitlement programs,

Further, Treasury does not engage in substantial contracting. Rather, Treasury's responsibilities are in economic, tax, monetary policy, tax administration, and law enforcement.

It also receives and disburses the Government's funds. Thus, Treasury's audits and investigations have focused on the adequacy of the Department's internal control procedures. Their goal has been to protect the integrity of the Department's systems and to insure that the moneys handled by the Treasury are processed expeditiously and safely.

The proposed legislation recognizes the unique nature of the Treasury by protecting the Department's mandate to help establish the Nation's economic policies and its law enforcement priorities while insuring the independence of the Inspector General.

The need for separating policy and audit functions can be seen most clearly as you begin to examine Treasury's various economic and law enforcement functions.

For example, Treasury has offices which are involved in such areas as trade and investment policy, bank relation, loan guarantees, international and domestic policy, foreign assets control, and multilateral development banks.

Decisions made by the Treasury officials with respect to these activities are made in the context of broad economic public policy considerations, both domestic and international.

Empowering the inspector general to review these policy decisions could not only affect Treasury but the Nation's economic and foreign policy, as well.

Second guessing economic policy decisions through the Inspector General's Office could have a significant unintended effect on the financial markets whose performance often reflects these policy decisions.

This is particularly true because the Inspector General would be obligated by the Inspector General Act to make public semiannual reports which would contain recommendations for corrective action in the Department's programs and operations.

The same argument holds true in the law enforcement area. Program officials with direct responsibility and expertise must exercise a professional judgment in these unique areas without the harmful effects of second guessing by the Inspector General.

The proposed legislation, however, does not limit the Inspector General's authority to review allegations that a decision was improperly influenced or that funds, once allocated, were not properly expended or administered.

This function, traditionally has been at the heart of the Inspector General's role and as the figures I have cited show, it can be and has been performed effectively by the Treasury's Inspector General. Because this bill would protect the Inspector General's independence and enhance his ability to act aggressively against fraud, waste and abuse without impeding the Department's key policymaking functions, the Department, as previously stated, agrees with the establishment of the statutory Inspector General.

Finally, we would like to recommend that the Treasury Inspector General's responsibilities and duties be placed in one section of the Inspector General bill, similar to the recommendation of the Justice Department.

We believe this would make clear the unique policy and law enforcement role of Treasury, as well as establish the independence of the Inspector General.

This concludes my prepared remarks. I will be happy to answer any questions.

Chairman ROTH. Miss Waxman, I don't believe I have any questions, but I appreciate your coming here and endorsing the concept. We will be in contact as we proceed with the markup.

Thank you, very much.

Ms. WAXMAN. Thank you.

[The prepared statement of Ms. Waxman follows:]

PREPARED STATEMENT OF MARGERY WAXMAN, DEPUTY GENERAL COUNSEL, DEPARTMENT OF THE TREASURY

Mr. Chairman, I am pleased to have the opportunity to appear before this Committee and to provide the views of Treasury concerning the proposed amendments to the Inspector General act of 1978. Accompanying me is the Department's Inspector General, Paul Trause.

As the Assistant Secretary for Administration stated in her testimony before this Committee on April 8, 1981, the Treasury Department supports the establishment of a statutory Inspector General and agrees with the general thrust of this bill. In fact,

we have had an administratively created Office of Inspector General since July 1978, and we are proud of the way that Office has functioned.

During fiscal year 1981 the Department's internal auditors produced over a half billion dollars in audit penalties, recoveries and additional revenues; $2 million in questioned costs disallowed through audits and approximately $9.7 million in possible savings through new procedures. Further, the Department's internal investigators completed about 8,500 investigations. These investigations resulted in over 210 prosecutions and over 1900 administrative disciplinary actions. The investigations also produced over $8.8 million in penalties, recoveries and additional revenues.

These accomplishments and the future of the Inspector General's office must be viewed in light of Treasury's mission. Unlike most Departments with statutory Inspectors General, the Treasury Department, with the exception of the revenue sharing program, administers neither grant nor entitlement programs. Further, Treasury does not engage in extensive contracting. Rather, Treasury's responsibilities are in economic, tax, and monetary policy, tax administration, and law enforcement. It also receives and disburses the Government's funds. Thus, Treasury's audits and investigations have focused on the adequacy of the Department's internal control procedures. Their goal has been to protect the integrity of the Department's systems and to ensure that the monies handled by the Treasury are processed expeditiously and safely.

The proposed legislation recognizes the unique nature of the Treasury by protecting the Department's mandate to help establish the nation's economic policies and its law enforcement priorities while ensuring the independence of the Inspector General.

Because of the nature of Treasury's mission, the sensitivity of its activities, and its role in formulating economic and monetary policy, we have maintained that the internal audit and investigation functions must be kept separate from the unique policy functions of the Department. Section 8C(c) of the proposed amendments to the Act would ensure this separation.

The need for separating policy and audit functions can be seen most clearly as you begin to examine Treasury's various economic and law enforcement functions. For example, Treasury has offices which are involved in such areas as trade and investment policy, bank regulation, loan guarantees, international and domestic tax policy, foreign assest control and multilateral development banks. Decisions made by Treasury officials with respect to these activities are made in the context of broad economic and public policy considerations, both domestic and international. Empowering an Inspector General to review these policy decisions could not only affect Treasury, but the nation's economic and foreign policy as well. Second-guessing economic policy decisions through the Inspector General's Office could have a significant unintended effect on the financial markets whose performance often reflects these policy decisions. This is particularly true because the Inspector General would be obligated by the Inspector General Act to make public semiannual reports which would contain recommendations for corrective action in the Department's program and operations.

The same argument holds true in the area of law enforcement. For example, a decision made by officials of the Customs Service to commit vast resources and staff power to a lengthy drug smuggling investigation might be viewed by an Inspector General as inefficient or ineffective. But law enforcement activities are not meant to be measured solely in terms of cost effectiveness or from the Inspector General's perspective. Program officials with direct responsiblity and expertise must exercise their professional judgement in these unique areas without the harmful effects of second-guessing by the Inspector General.

Finally, to the extent that an Inspector General makes specific recommendations as to the wisdom of policy objectives of a particular program, he or she acquires a stake in the perceived effectiveness of these objectives. If the organization accepts the recommendations, the Inspector General is not then in a position to be as objective in assessing the achievement of its goals.

The proposed legislation, however, does not limit the Inspector General's authority to review allegations that a decision was improperly influenced, or that funds, once allocated, were not properly expended or administered. This function traditionally has been at the heart of the Inspector General's role and, as the figures which I cited show, can be and has been performed effectively by the Treasury's Inspector General. Because this bill will protect the Inspector General's independence and enhance his ability to act aggressively against fraud, waste and abuse without impeding the Department's key policymaking functions, the Department, as previously stated, agrees with the establishment of a statutory Inspector General.

We believe, however, that two changes should be made in the bill. First, the program review function and the related resources in the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Secret Service should not be transferred to the Inspector General's Office. These units have functioned as in-house management consultants rather than as true internal auditors or investigators. They are essential to line management's ability to diagnose and to address problems before they become major crisis. If managers are deprived of these resources, they simply will be forced to divert other resources to meet their legitimate management needs. Therefore, transferring these resources to the Inspector General's office will result in unnecessary duplication and will not add materially to the Inspector General's ability to combat waste, fraud and abuse.

Second, Treasury does not believe that the Inspector General should be authorized to release information about an on-going criminal investigation. The Department has adopted a consistent policy that this type of information should not be released and does not believe that the Inspector General should be exempted from this important policy. The official release of information about which there has been public speculation obviously could harm on-going investigations.

This concludes my remarks on the proposed legislation. Thank you, I will now be pleased to answer any questions that you may have.

Chairman ROTH. For the remainder of the week, until Friday, we will leave the record open in the event any Senator cares to submit further questions to be answered in writing.

The committee is in recess.

[Whereupon, at 11:55 a.m., the committee recessed, to reconvene at the call of the Chair.]

○